Board of Inquiry into the McCrae landslide

Before: The Chairperson,
Ms Renée Enbom KC

Federal Court of Victoria,
305 William Street, Melbourne, Victoria

Friday, 20 June 2025 at 10.00am

(Day 8)

Mr M. Costello KC with Ms A. Kittikhoun appeared as Counsel Assisting.

Ms K. Evans KC with Ms E. Peppler and Mr C. McDermott appeared on behalf of the State of Victoria.

Ms K. Foley SC with Ms E. Bateman, Mr C. Viney and Dr W. Phillips appeared on behalf of the Mornington Peninsula Shire Council.

Ms D. Siemensma appeared on behalf of South East Water Corporation.

CHAIRPERSON: Good morning, everyone. I'll take appearances, Mr Costello.

MR COSTELLO: I appear with Ms Kittikhoun.

MS FOLEY: Ms Foley with Dr Phillips for the shire.

MS SIEMENSMA: Madam Chair, I appear for South East Water.

CHAIRPERSON: Thank you.

MS EVANS: Good morning, I appear with Ms Peppler for the State of Victoria.

CHAIRPERSON: Thank you. Mr Costello.

MR COSTELLO: Thank you, Madam Chair. The first witness is Mr David Smith from the shire. I call Mr Smith.

<DAVID SMITH, affirmed:

<EXAMINED BY MR COSTELLO:

CHAIRPERSON: Mr Smith, Mr Costello is one of the counsel assisting the Inquiry, and he'll ask you some questions.
A. Thank you.

MR COSTELLO: Feel free to pour yourself a glass of water.
A. Thank you.

Q. Your full name's David Smith?
A. That is correct

Q. Can you state for the record your business address, please?
A. Business address is 90 Besgrove Street, Rosebud, I think it is, thank you.

Q. And your current occupation?
A. I am the director of assets and infrastructure at the Mornington Peninsula Shire.

Q. Mr Smith, you have made three witness statements for the purpose of this board of inquiry; is that correct?
A. That is correct.

Q. The first is dated 17 April 2025?

A. Yep. Yes, I do. Yes.

Q. And the second is 30 April 2025?
A. I believe that is correct without seeing it, sorry.

Q. I'll show you a copy in a moment. And the third is 11 June 2025?
A. That certainly sounds right, yep.

Q. I'll have a copy of those witness statements handed to you.
A. Thank you.

Q. Now, Mr Smith, can you find there amongst the material you've been handed your witness statement dated 17 April 2025?
A. Yes, I've got it in front of me.

Q. Okay. And are the contents of that witness statement true and correct?
A. As far as I believe, yes.

Q. Thank you. Do you have a pen with you?
A. Yes, I do

Q. Could I ask you to sign that witness statement on the second last page, 10 of 11.
A. Yep, I've done it.

Q. Thank you. Can you now find your second witness statement, the one dated 30 April?
A. Yes, I've got that.

Q. Again, are the contents of that witness statement true and correct?
A. I believe they are, yes.

Q. Thank you. Could I ask you to sign that on the final page, please, 14 of 14.
A. That's done.

Q. The final witness statement, which is the one dated 11 June 2025, are the contents of that statement true and correct?
A. I believe they are, yes.

Q. Thank you. Can you please sign that on the final

page, 11 of 11. Thank you.

Madam Chair, I tender each of those witness statements and the exhibits thereto.

CHAIRPERSON: Three witness statements of David Smith and the documents referred to in those statements will be exhibit CA31.

EXHIBIT #CA31 THREE WITNESS STATEMENTS OF DAVID SMITH AND THE DOCUMENTS REFERRED TO THEREIN

MR COSTELLO: Now, Mr Smith, you're trained as an engineer; is that correct?
A. I have a degree in civil engineering, yes.

Q. All right. And you've worked as an engineer?
A. No, I am a director of assets and infrastructure, yes.

Q. Sorry, my question was you have worked as an engineer before?
A. Yes, as a traffic and road safety engineer and others, yes.

Q. Thank you. And you've had an extensive career with the shire?
A. Yes, that is correct.

Q. At the time of the 2022 landslide you were the manager, programs and project management office?
A. That is correct.

Q. Could you just describe what that role entailed?
A. So programs and project management office manager, I used to oversee the development of our annual capital works program and the monitoring of that. Also looking at how we improve project management practices across the organisation, implementing new systems and frameworks to support the organisation to deliver the best possible projects for the community. And then another arm to that role was actually some of our more major complex projects, such as our Peninsula Trails project, our visitor paid parking pilot and other sort of more complex projects.

Q. And what was the position that you reported to when you were manager, programs and project management office?
A. Director of corporate strategy and business

improvement.

Q. And, insofar as that role concerned the development of the capital works program, did it have any responsibility for rolling that program out, or it was simply to develop the program?
A. Simply to develop and then monitor the progress of the whole program.

Q. And then who within the council had primary responsibility for rolling out the capital works program that you had developed?
A. It sits across multiple teams. Our capital program has multiple different delivery arms. So one is our manager of infrastructure projects that delivers probably about 65 per cent of the capital program, our manager of infrastructure services delivers potentially around 10 to 15 per cent, and then others across the organisation, our manager of climate change and environment, and others as well.

Q. Right. In the time - more recent history, including the time of the 2025 landslides, you were in your current role, which is director assets and infrastructure?
A. That is correct.

Q. All right. And could you just give a brief description of what that role entails?
A. Okay. I'll do my best. So it's three different departments that sit within the directorate. So one of those is called infrastructure projects, which looks after, as I mentioned before, approximately 65 per cent of the capital works program, as well as asset protection and our development engineering team. The second department is what's called infrastructure services, which is majority of our maintenance that happens across the Mornington Peninsula of our assets, as well as our natural systems team, so our roads and footpaths and drains, our open spaces, sports fields and playgrounds and the like, as well as tree management. And then the last team within my department or unit is called buildings - assets, buildings and property, which looks after our property portfolio, our strategic asset management, and our buildings management.

Q. And so there's three departments within your area of responsibility, and one of them is the infrastructure projects department?

A. That is correct.

Q. And you said that that's responsible for about 65 per cent of the capital works. Does that include capital works in respect of stormwater systems?
A. Yes, they would do the design and delivery of any funded stormwater projects.

Q. And within the second department you mentioned infrastructure services, which is concerned principally with maintenance. Does that include maintenance of the stormwater system?
A. That is correct, yes.

Q. So in your current role then you have primary responsibility for capital works, including the replacement or extension of stormwater - the stormwater system and maintenance of that system?
A. That is correct, yes.

Q. Thank you. I'll come to your third witness statement in a moment, which deals primarily with 2022 events, just so we can do it chronologically. But, while we were on the topic of the departments for which you have responsibility, is the area that you run called a directorate?
A. Yes, that is correct.

Q. So there's a directorate and there are three departments within the directorate. Now, it seems from your first witness statement and from other evidence that has been received by the board of inquiry in the course of its work that a large amount of at least maintenance work done by the council in connection with its capital assets is done by contractors; is that a fair statement?
A. That is correct, yes.

Q. Right. So, when you're speaking of the infrastructure services department being responsible for maintenance, is a lot of the work done by council employees within that department work that involves dealing with or instructing contractors to in fact do the work?
A. That is correct.

Q. All right. And about how many people would you guess - would you estimate, rather, work within the infrastructure services department?
A. I should know this. It's around about 35 to 40,

I believe.

Q. And do any of these people actually do physical work in maintaining the infrastructure?
A. Within the infrastructure services department, no. However, within our buildings management we actually have a small building trades team, yes.

Q. When you say buildings management, is that within the assets, buildings and property department --
A. That is correct, in the separate - yeah.

Q. I see. But those people wouldn't have responsibility for stormwater infrastructure?
A. No, that's correct.

Q. Okay. So all physical maintenance of stormwater infrastructure within the council area is done by contractors on the instructions of people within the department of infrastructure services; is that a fair way of describing it?
A. I wouldn't say on instruction. They've got obviously a lot of autonomy within their own to actually undertake works in accordance with the contracts that are there. But certainly, yes, in conjunction with the team, yes.

Q. I see. A contractor engaged by the shire has a degree of autonomy in effecting or in performing maintenance works?
A. That's correct. They work within obviously the specifications of the contracts and within the - obviously bound by the contracts and what we are asking to be done. We kind of see our contractors as an extension of our teams. So when they talk to our community they really do talk as if they are working as part of the shire.

Q. Right. And again in general terms - obviously the contract will give the definitive answer, but just so I can understand at least how it's understood and operationalised within your directorate and the departments within it - is the degree of autonomy that the contractors have in respect of maintenance - is that in respect of things like cleaning or is it actually in respect of things like physical repair as well?
A. Yes, some of it will be - so obviously there's inspections and maintenance, and so some level of repairs are within the actual contract that they are responsible

for just identifying that and getting it done, and there will be certain things that are identified, say, more complex that then get obviously discussed together with the roads and drainage team as required, yes.

Q. And in terms of repairs is the degree of autonomy bounded in some way by a cost cap; that is, below a certain amount they can effect a repair but above a certain amount they need approval?
A. In some areas it could be, but mostly it's based on the type of activity that they're undertaking.

Q. I see. Thank you. So just to finish off on this topic, which we might come back to, in terms of the type of activity that they could undertake can you just give me an example of something they could do and then give me an example of something that they couldn't autonomously do?
A. Sure. So a contractor could undertake an inspection - would you like me to sort of relate it to,say, stormwater in that sense?

Q. That would be useful; thank you.
A. Yes. So a contractor undertakes an inspection of a stormwater pit, identifies that it's a certain percentage blocked and needs clearing out, that they would have the autonomy to go - obviously in accordance with the contract, to just go and clear that pit within their lump sum of their contract. If they went out and identified that actually the whole pit had collapsed and required to be rebuilt, an obviously more complex project, they would then refer that and discuss that with the council officers to develop up a scope to deliver that project, yes.

Q. I see. When you're talking there about the concept of a pit collapsing and needing to be rebuilt, does that move from an issue of maintenance, and that is move from that department into the department responsible for capital works?
A. No, that still could - that's the sort of scale of project that could be done by that team, yes.

Q. Thank you. That's very useful. Thank you. Let me just come to your third witness statement to start with. You'll recall that the first question that you were asked by the board of inquiry and answered in that witness statement concerned the awareness of the shire of a water main bursting on or around 14 November 2022; do you recall

that that was the question you were asked?
A. Was that - did you say the first one or the - was that in the first statement? I can't recall. Can you bring that up for me?

Q. In your third witness statement.
A. In the third, yes. Yes, sorry, yes, yes, yes.

Q. So the first question - it's a bit confusing. Let me make sure it's all clear. Third witness statement, first question concerned awareness of the council of a burst water main that burst in the vicinity of 23 Coburn Avenue on or around 14 November 2022. You recall that you were asked that question?
A. Yes, I do, yes.

Q. When I say 23 Coburn Avenue I don't expect you to have that precise location in your head, but do you know where Coburn Avenue is, for example?
A. I understand the proximity of that, yes.

Q. Thank you. Thank you very much. Your answer was in general terms that the shire was not aware of the 14 November burst I think until South East Water's evidence in this board of enquiry came to light; is that right?
A. From the information that I've been provided, yes, that is correct.

Q. All right. Let me just understand the extent of the information that you've been provided. When you came to answer that question did you make enquiries of other council officers?
A. I did not, no. So that was something that was prepared, and obviously we received the asset protection notification that that was found as sort of - when that was asked the question. But, no, I did not, no.

Q. Okay. So just - I'm not being critical of you here. I just want to understand the process. What did you do in order to be confident that the answer to that first question was, no, the council was not aware of the 14 November burst? Just explain the process.
A. Yes. So basically I spoke to the manager that obviously looks after the asset protection area, where those notifications come through, and asked what was available, what information on that particular topic, and that's what was provided, was obviously that notification

was what was on record.

Q. Just explain to me what the asset protection area is and where that sits within the council?
A. Sure. So the asset protection team sits within the infrastructure projects department.

Q. I see.
A. Yes, and so what they do is they oversee basically protecting council-owned assets when there's private works that are going on to ensure that if there's any damage done to our assets during those private works that they're repaired and the costs are recovered. So one of the elements of that is obviously utility companies and the works that they do around the peninsula, and making sure that if any of their works are impacting on our assets that we're notified of that as part of that as well. So basically South East Water would generally, as you would have seen in the witness statement, provide a summary of where they've gone in and done works on a monthly basis.

Q. And did you mention something called an asset protection report?
A. I can't recall.

Q. I don't mean in your statement. I mean in your evidence before did you say that there was an asset protection report that was filed?
A. No, we get notified.

Q. A notification?
A. Yes.

Q. And when you - that notification, are you talking about a road openings report or are you talking about something different
A. I'm actually not sure. I think I'm talking about a road openings report, yes.

Q. I see. Okay. That makes sense to me. Thank you. Do you have a recollection of whether or not the council was aware of the roadworks that were conducted at 26 Coburn Avenue on or about 22 November at the time those roadworks were undertaken?
A. I'm not, no. So the - do you - is that related to the South East Water works?

Q. I'll show you your statement in a minute. I'm just trying to understand what it is that you in fact recall and what it was - what enquiries you made in coming to answer these questions. It looks as though the way council becomes aware of works of this kind is via a road openings report. Is that your understanding?
A. That is correct.

Q. All right. Could you just describe what a road openings report is and who completes a road openings report?
A. I'm not going to be able to talk to this in detail. I've only been in this particular role for six months, so this is probably new to me as well, so excuse me if I don't have the full detail. But I understand we're just provided with a report from - I believe on a monthly basis, for example, from South East Water on any works they've undertaken within our roads to notify us of those.

Q. I see. So it can be the case that on occasion South East Water will undertake work on a council road; is that the start of this process?
A. They would undertake works on their asset that happens to be within our road, which then means they may need to repair sections of our road in putting that back together, basically.

Q. So to the extent that they have to damage or, to use the word of the report, open a council road in order to effect repairs of their own infrastructure they do that, they do it without first seeking permission, but then they notify you of the fact that that's been done?
A. That is my understanding, yes.

Q. And I understand, to be clear with you, Mr Smith, that you weren't in the role at the time of 2022?
A. That is correct.

Q. What's the purpose of a road opening report?
A. Once again, I'm going to talk - I don't have that, like, exact detail here, but I'm assuming it's just to notify us that works have happened within our road. So I guess we could go and actually check that we're comfortable that it was reinstated to a level that we are happy with.

Q. I see. You've said in your statement, to be fair,

that the purpose of the report is for South East Water to inform the shire of works scheduled to occur or that have occurred on roadways and footpaths in the council, which makes perfect sense. It's notification. But is it your understanding that the purpose of the notification is so council can then verify if the works have been done to an appropriate standard?
A. I'm going to answer that that I'm not sure. I'm actually at this point in time not sure if that's exactly what the purpose is, but certainly we receive the notification to advise of it.

Q. Do you know if there is any process within the council for the investigation or follow-up of matters reported in a road opening report?
A. No, I'm not aware of the exact process, no.

Q. You say in your report that road opening reports are received by the shire's assets protection admin email account, which is a shared inbox; do you recall that?
A. I do, yes.

Q. And you say that a number of members within the asset and infrastructure division have access to that shared inbox?
A. That is correct.

Q. All right. But you don't know if a report being received into that shared inbox is then subject to any particular sort of process?
A. That's right, yes, at this point in time I don't know.

Q. All right. The asset protection team previously - that is in 2022, which is the relevant time for the current line of questioning that I'm asking you - reported to the manager, community safety and compliance; you've said that in your witness statement?
A. Yes, that is correct, yes.

Q. And then there was a change made, and so it now reports to the manager of the infrastructure projects?
A. That is correct, yes.

Q. And was the community safety and compliance manager within your directorate?
A. No, that was in a different directorate.

Q. I see. And are you aware of why the change was made, the reporting requirement?
A. No, I'm not, no.

Q. Okay. Now, as we said at the outset, your evidence is that the council was not aware of the 14 November burst until fairly recently; is that a fair way to describe it?
A. From the information I've seen, yes, that's fair.

Q. All right. Are you aware of whether any enquiries have been made by the council about the 14 November 2022 burst since it became aware of it?
A. I'm not sure. I'm not aware of that, no.

Q. Okay. Have you had discussions with any senior officers within the council about the fact that there was a burst water main on Coburn Avenue on or about 14 November 2022?
A. No, I have not, no.

Q. As you sit there do you understand the potential significance of that burst water main to the landslide that occurred in 2022?
A. No, I don't even know how much water or I know nothing - no detail about the actual burst itself, no.

Q. Okay. And that's not something that you've sought to become aware of before giving evidence today?
A. No, I didn't understand that it was significant to it, yes.

Q. I see. When you say you didn't understand it was significant, do you mean you didn't understand the burst water main was significant to the landslide?
A. Yes, yes.

Q. The first question that you were asked had three subquestions. So the question was, "Prior to the 5 January 2025 landslide was the shire aware of a water main bursting on or around 14 November 2022 in the vicinity of 23 Coburn Avenue, McCrae," and we've talked about your evidence in answer to that first part of the question. There were then three subquestions, and the third was, "Whether the shire considered the extent to which the matter main burst may have contributed in some way to the November 2022 landslide," and that's what I've just been asking you about. I think I'm right to say that you don't directly

answer that question in your witness statement, so I just want to be clear what your answer is. Your answer to that question, "Whether the shire considered the extent to which the water main burst may have contributed in some way to the November 2022 landslide", is that you do not know?
A. That is correct. Others may, but I do not know, yes.

Q. Do not know. And you certainly have not considered the extent to which it has?
A. That is correct, yes.

Q. Thank you. I now want to come back to some of the material that we started on about the stormwater drain network and how that's managed and operated. The shire covers a large area and no doubt has a very significant stormwater network. You say in your witness statement that it's responsible for 60,490 stormwater pits and 1,497 kilometres of stormwater pipes; do you recall saying that?
A. I do, yes.

Q. Where does that information come from?
A. It comes out of our asset register.

Q. I see. Now, within your asset register or elsewhere within the council's records is there any identification of stormwater pipes or stormwater pits that are in higher risk areas, and by higher risk area I mean an area where a leak or damage may be more likely to have severe consequences?
A. In the asset register itself I'm not sure. In terms of every - we've got all the assets mapped that we're aware of, and we sort of try to identify the size and that type of thing. Within our other strategies, such as the sort of flood and stormwater strategy, obviously we look at things like catchments, and at the moment, for example, there's a lot of work going on around flood mapping across the peninsula to identify where areas there could be higher risk. So at the moment I'd say in our asset register, no, but certainly something that could be looked at in the future.

Q. It's clear from your evidence and some of the documents that you have exhibited to your witness statement that there has been for quite some period of time an extensive amount of work done by the council in respect of the issue of flood generally. Do you think that's a fair description of the --
A. Yes, within obviously budgetary constraints we do

whatever we can to try and minimise the risk, yes.

Q. Is it right to say that there is no equivalent process in respect of landslide risk insofar as stormwater is concerned?
A. I think naturally through stormwater - managing stormwater you're then managing - if we're talking about in relation to risk associated with stormwater, by effectively managing the stormwater you're then managing the risk, but yes, yes.

Q. Well, would that answer also hold true for the question of flood?
A. What question?

Q. By managing the stormwater assets you're naturally managing the risk of flood?
A. You're doing your best to manage the risk of flood, yes.

Q. But you accept, though, that there are particular considerations and there has been a significant amount of work done by the council on the question of flood specifically?
A. Yes.

Q. Disconnected from the general maintenance of the stormwater system?
A. No, no, I wouldn't say that. I'd say we certainly - for example, when we look at pit inspection frequencies, that is aligned with catchments and identifying where there's areas of potential higher flooding to then have higher inspection frequency of those pits.

Q. Yes, I see. Thank you. I'll come back to that in a moment. As is invariably the case, there is a cascade of policy documents here that start at the more abstract and descend down to the particular, and you have explained those or at least some of them in your statement. I think the highest level of them insofar as stormwater is concerned is the shire's asset management policy. Would that be right?
A. Within the asset management framework itself the policy sits at the top, but we also have a 10-year asset plan that - within the integrated planning framework of council a 10-year asset plan that also does sit up above the framework with the long-term financial plan as well.

Q. If you conceive of it, and I'm sure this is done in one of the documents, as a policy pyramid?
A. Yes.

Q. Is the council asset management policy at the top of the pyramid?
A. The policy definitely provides the overarching guidance and principles for asset management framework, yes.

Q. And the policy is a document that's promulgated by the council itself?
A. Correct, they endorse that, correct.

Q. And then there are gradations of policy and operational detail after that. Did you say perhaps the next most significant is the Mornington Peninsula Shire asset management strategy?
A. I wouldn't say significant. I'd say in terms of the natural flow of having principles, objectives and then technical. I don't think any of them are sort of more critical than the other. They work together. But yeah, yeah.

Q. Yes, I think that's fair. The next within the pyramid, though, would be the asset management strategy?
A. That is correct.

Q. And that's a 10-year strategy?
A. Yes, correct.

Q. The current one is 2020 to 2030?
A. Yes, but we're actually currently updating that as well, yes.

Q. My next question. How often is it updated?
A. So I can't remember the exact date - I haven't got it in front of me - when it was endorsed previously. I don't know if you can tell me that?

Q. Well, why don't I bring it up on the screen rather than - I think it's MSC.5057.0001.0770. This is the document that you're talking about?
A. Yes, that is the one.

Q. Okay. This is the one, just to orientate you a

little, that you've exhibited to your witness statement?
A. Yes, yes.

Q. And is there a ready way of ascertaining when it was last updated?
A. There's normally a table in the second page or back page as I'd recent - potentially this one doesn't. I'm trying to recall.

Q. I don't think there is.
A. It hasn't been updated since this one was endorsed, and they've currently got a draft of a new one at the moment, yes.

Q. Okay. Let me just make sure that I understand the effect of the evidence you've just given. This is a 2020 to 2030 plan. Is it updated periodically in the course of that 10-year period?
A. I think, yes, it's intended to have a 10-year horizon to make sure we're thinking forward and what are the future needs and demands in incorporating what we do. But I think in general these types of documents, you know, four to five years is probably a good timeframe to be reviewing because things, as we know, change considerably in short periods of time with climate change and the like.

Q. You said there is an updated draft currently?
A. We are working on a draft now following the council plan has been developed, so every four years the council plan gets redone, and so we are re-aligning and looking at if that shifts the direction of what these plans need to be working towards.

Q. And when that plan is eventually finalised will that still be a 2020 to 2030 strategy, or will that push the end date out?
A. It will push the end date out.

Q. So it will be 2025 or 2026 to --
A. Correct.

Q. -- 2036? Is it always 10 years?
A. Does haven't to be, I don't think, but I think that's what we chose at the time.

Q. Okay. So who is principally responsible for the development of the asset management strategy within the

shire?
A. So that now - as of the restructure where I've become director of this assets and infrastructure directorate, that sits - the strategic asset management sits within the property, assets and buildings space. So the asset management team that look after the data and strategic documentations of assets.

Q. Is that a team in your directorate?
A. Yes. Yes, it is.

Q. And so does that mean within the broader structure of the council that you're the senior officer responsible for this document?
A. That is correct.

Q. Okay. Thank you. If we could just move to the - I think it's the fifth page of that document. It will be numbered page 3. Thank you. Yes, there, thank you. This is the pyramid that I had in mind. The top of it is a bit more highfalutin than you and I were talking about, that once you get into the blue area you've got the hard documents, and this is the second within that structure, is that right, the asset management strategy?
A. Yes, and it's probably worth pointing out with the newly adopted policy - so the policy that you saw is actually adopted fairly recently, and so that policy actually makes a shift in direction around the structure of this, you'll notice. So, like, this has what's called a strategic asset management plan, and within the policy it actually moves away from that model to streamline it. So that's why or sort of part of the reason we're doing a new strategy is to re-align that with the new policy as well.

Q. Is the new policy the policy that was approved on 26 August 2024?
A. That is correct, yes.

Q. Thank you. And so by reason of that policy being updated it's necessitated an update to this document?
A. That is correct.

Q. That update is in the works but not yet complete?
A. Yes, we decided to wait until the council plan was finalised so that we could incorporate - and the community's vision and feedback through the budget process to make sure we could reflect all of the community's input

as well.

Q. All right. I just want to understand within the context of this pyramid how things work on the ground, as it were. So there's the asset management policy, then strategy, then plan. There's then asset management plans, asset operational plans and group business plans. So there's a whole ecosystem of documents being produced here. There were works done to the stormwater system on Prospect Hill Road/View Point drive area after the 2022 landslide; are you generally aware of that?
A. Yes, I am.

Q. Okay. So I don't want to get into the details of those works just yet, although we will a little, but just explain to me how those types of work mesh within this structure. Would that type of work be programmed in one of these documents?
A. So obviously those works, I'll try and explain, yes, so condition assessments are obviously undertaken. Asset management plans talk about making sure we understand the condition of our assets to help inform make decisions. So within that obviously we then have a condition assessment program across our different asset types. So, as I say, that sits probably within asset management plans, that calls that we should be doing that.

Q. Did you say the asset management plans?
A. Plans, yes, the individual four - the four major asset plans for the major - yes, transport, stormwater, open space, and buildings and facilities are the four major asset plans. So within that obviously we do condition inspections, and in relation to the project you're talking about I believe it was in 2019 a condition assessment of the kerb and channel was undertaken using the data that was collected in 2017 when we do our road data collection, and from that it was identified that View Point Road, the condition of the kerb and channel was in very poor condition, which flagged that it needed to be renewed. So that's where that was sort of born and how it fits in with that. It probably fits in as well with the policy, which our policy says we should prioritise renewing assets over building new ones. So, obviously in line with that, we do invest a lot in renewal of assets over trying to build too many new things.

Q. Yes. There's an interesting distinction about the

extent to which building a new thing or maintaining something, obviously?
A. Yes.

Q. Is the distinction for the purpose of an existing stormwater asset like this that if there's already something in place, even if you're entirely replacing it, you're not building a new thing?
A. With this one you definitely define it as a renewal and upgrade, because obviously we identified that we could improve the drainage within that area to ensure that it was not impacting the condition of the kerb and channel in the future. So definitely within that when you look at a renewal project it definitely - you know, you look at what's the current functionality and capacity, can you improve it when you're renewing it, that's part of renewal, yes.

Q. Something of lumberjack axe in this: got three new handles and two new heads, but is it still the same axe?
A. Yes.

Q. That was identified in 2019, I think you just said?
A. Yes.

Q. The need for the renewal?
A. Yes.

Q. So when that was identified does that find its way into an asset operational plan or a group business plan?
A. It - I will say that ideally it should.

Q. Right.
A. So asset management plans in an ideal world will have, you know, projects mapped out in them. We're still maturing in that space around our documentation of, you know, asset plans, like, these asset plans were a big step up from what we had previously --

Q. I see.
A. -- in terms of working towards really improving our asset management practices. So obviously within our long-term capital works programming they would be identified within our kerb and channel programs to say, "Over the next four years we have done a condition inspection. Here are the kerb and channel we have identified that have reached end of life, that should be

renewed," and then we look at programming that out.

Q. All right. I'm going to come back to that in a minute, but let me just continue to work through this document with you for a moment. Could we move on to numbered page 6, please, three pages ahead. If we could have 6 and 7 on the screen at the same time, please. Sorry, it's a couple more along. Six at the bottom. Could we have 6 and 7. Thank you. This diagram, if that's a correct description of it, is described as the state of assets 2020. Presumably this is being updated in the course of your update of the document?
A. Yes.

Q. Is that right?
A. Correct.

Q. This is a standard feature of these types of document?
A. Correct, yes.

Q. All right. What we're most concerned with for present purposes is drainage, but in respect of each asset class identified there's a quality function and capacity score, save that in every case there's no function or capacity score given here?
A. Correct.

Q. Why's that the case?
A. Because you've got to have the data. So basically this is an area across all of local government, and I'm assuming even State Government, and every probably person - operators that manage assets. It's obviously - the easiest information to get on an asset is to understand the base information and then collect condition. But actually understanding how you can actually capture a true representation of its functionality and its capacity can be a real challenge across varying assets. So this is something that is aspirational within the future to help us continue to evolve our decision making, and how we make the best decisions, ideal world, is that we try and continue towards - working towards how we can actually capture functionality and capacity, and a good example would be stormwater in the future. Obviously we've been doing some updated flood mapping to get a really good understanding around flooding on the peninsula and potentials. So ideally we're then looking at ways to how could we build that capacity into this piece of work. But at the moment

we don't have the data for that type of analysis.

Q. I see. So although you didn't have the data for any of these asset types, and I acknowledge you weren't the one responsible for this document, so far as you understand it it's been stated there as an aspiration so that in the future you will be able to have --
A. Absolutely. Moving forward we're continually trying to find ways we can capture that data.

Q. The measure that you do have - the council, rather, did have data for in respect of each asset class was quality, and in the note which - I don't know if you can see it on your screen there?
A. I can.

Q. The note at the bottom of page 6, it says, "Performance given as a percentage of assets that meet current levels of service do not need to be considered for capital intervention." Is that note for performance, is that related to the quality measure?
A. Yes, I believe it is related to the condition of it, yes.

Q. I see. So the quality for drainage here is said to be 99 per cent, and do you have an understanding of how that measure has been - sorry, how that percentage has been arrived at?
A. I couldn't give you the exact way but, certainly from my knowledge of assets, when it comes to stormwater it's generally related to the age of the asset. So looking at what the expected useful life of a particular asset is, and with drainage obviously it's very hard to see it because it's under the ground, so a lot of the condition information would be reverted back to the age of an asset. So that's how I'm assuming it's been, I would assume - my assumption would be that it's based on mostly the age of the asset versus what its expected useful life would be.

Q. I see. And so that's one particular way of describing quality, but you would accept that that's not a comprehensive determination of the quality of the asset class in the area?
A. I would agree with that, yes.

Q. I see. And, for example, that quality measure doesn't tell you if there are a lack of stormwater drainage pits in

a particular area?
A. Yes, and that would probably come down to more function and any capacity, is where I would sort of I think about that.

Q. I see. And are you aware of whether the updated asset management strategy that's currently being worked on will be able to give an assessment of the function and capacity of drainage?
A. I don't think we'd be at that point yet. As I say, I'm not going to say no because maybe there's more work in the background than what I have and sort of in terms of what could feed into this to help and - but, from my knowledge, I don't think we'd be at a point in time where we could have really great information yet on being able to populate that. But, once again, we have done an extensive flood mapping recently, which may potentially give us information that we could be looking at moving forward.

Q. Okay. Could we go forward to page 11 of that document, please. There's some description here of the asset performance measures that we've just been discussing. Do you see there that "quality" is described as "the actual physical and technical state of the asset"? Seeing that, it's still your evidence that the measure in respect of drainage is really a function of age of the asset?
A. I'd say that - yes. I'd say at this point yes. I would have to say yes. Yes.

Q. Yes. So "the actual physical and technical state of the asset" is the description given there but, at least insofar as it concerns stormwater assets, that is measured by one indicator, which is the age of the particular asset?
A. For this document it would have been, absolutely. What I can say is that we have attempted to start to take a different approach to that moving forward, and as of last year for the first time we did proactive more approach to that in terms of trying to get condition of the stormwater assets, where we sampled a small percentage of the asset, actually sent CCTV cameras down some areas proactively to try and start to capture and understand that so it's not just reliant on age, yes.

Q. I see. And can you see at the paragraph at the bottom of - sorry, the first paragraph at the bottom of that column it says, "These service level areas will act as triggers for when these assets should be considered for

capital works intervention." So how does that work in a practical sense?
A. Yes. So in terms of capacity, I guess, in terms of understanding, you know, we have done some level of sort of flood mapping in the past, and so identifying areas where we know stormwater - the capacity is an issue in terms of size of pipe, areas not coping and, you know, residents advising that their properties are flooding and the like. So obviously that is something that happens across the peninsula where it's more of a reactive, where a community says, "We're flooding," so we then have to investigate and identify that the capacity isn't as much as it needs to be. So then we set up a, you know, capital works project to be able to deliver that and put in for a budget bid. And then in terms of other types is where we identify obviously - I'll give an example - a pipe fails somewhere under a road or something and we need to go and actually fix that, but it's a bigger project, so you do that as a capital works project as well because it's a longer stretch that needs to be fixed.

Q. All right. Let's get to the money. If we go to page 12 of the document, please. This is or at least was the forecast capital expenditure over 10 years done at the time of this document. No doubt this is being updated in the course of your preparation of the new version; is that right?
A. Yes, correct.

Q. All right. Do you have any understanding of - sticking with stormwater - how council's expenditure in the years that have passed since this document was created have tracked with the modelling here?
A. Off the top of my head, I don't have that with me. However, I know obviously with the impacts of rate capping and the like with our reduced budgets definitely I would say if I thought back to, say, seven, eight years ago I believe we've got less funding available to be able to do the upgrade projects. We really do focus on fixing the things that are failing to make sure they're operational. There hasn't been - there's certainly been some upgrade projects, and we potentially may have delivered, like, close to that amount, I would suggest. But it is very challenging, yes, obviously with budgetary constraints to try and address everything we would like to.

Q. By reason of budgetary constraints the focus is on

renewal rather than new infrastructure?
A. That is correct. But I would say if there is an area where we need, you know, to actively consider monitoring that it is in the drainage space because I would say renewal of drainage infrastructure can be obviously driven by the fact that, you know, properties are flooding and we need to respond by upgrading the capacity, which in return renews the asset but also increases the capacity of it as well at the same time.

Q. Okay. The forecast here over the 10-year period 2020 to 2030 was that council would spend 14.4 million on renewals and 9.3 million on new or upgraded infrastructure. As a proportion, do you think that that proportion will have changed in that there will be a greater gap between renewal and new upgraded infrastructure?
A. I'm not sure. Like, that's a good question. When I see the modelling obviously as part of the new plans that are being developed it will be very interesting to see if that changes.

Q. You've not yet seen it?
A. No, not the detail of it; no.

Q. Do you know if it's under way?
A. Yes, absolutely. Yes.

Q. And would it be fair to assume that it's not somebody within your directorate that has primary responsibility for that modelling?
A. Yes, it's a team collective effort. I think in the witness statement you would have seen that there's actually a stormwater group that comes together from various teams across the organisation, and they are helping sort of oversee and steer that piece of work at the moment to make sure all the different perspectives are coming into it.

Q. Thank you. I just want to ask you one more question about this document. If we could move to page 27, please. This is in a part of the report that's describing asset management objectives, and one of those broad category areas for the asset management objectives is information based. And at 4.1 you can see, "We will collect and maintain quality data on our assets that is spatially based, consistent and appropriate, includes up to date performance information, is regularly reviewed for accuracy and is made widely available for informing decisions on

council assets and services."
A. I can see that.

Q. To start, the gathering of information of that kind, is that the responsibility of your directorate?
A. Yes. But it's more of an organisational - so obviously we've also got a requirement that if others are undertaking anything on assets that they notify the asset management team; yes.

Q. To what extent is information relevant to landslide risk information that is collected for the purpose of meeting this particular objective?
A. That's a good question. I would say obviously I'm aware of the data collection that was done in 2012 I think in report around landslide susceptibility, but I don't believe that it's ever been incorporated into this planning in that way. Certainly in the planning of assets we would be considering the topography and the area in which assets are. However, I don't believe that that's been part of - you know, that information is a part of this.

Q. Are you aware of if there is any consideration to feeding that type of data into council's considerations?
A. I'll say this. In my opinion moving forward any data that we've got available that could help further inform good decision-making we will absolutely be looking at that, as we always do, to continuously improve and certainly that is a dataset that we could utilise in the future; yes.

Q. Are you aware, for example, about whether there is any specific identification of stormwater assets that are within an area captured by an erosion management overlay?
A. Not that I'm aware of, no.

Q. That information could be useful and relevant to your directorate's planning purposes?
A. Yes, I think we should - you know, all information that's available we should be looking at how we could utilise that, if appropriate. If it adds value, we should be absolutely always looking to include as much information as we can in our decision-making.

Q. Do you accept that there's at least the risk that a failure of a stormwater asset in an area subject to an erosion management overlay could potentially have very significant consequences?

A. It could. I'd agree with that. However, stormwater systems are designed to ensure that if they fail they actually have a secondary back-up flow path; for example, down the road or down a kerb and channel. So it would be very difficult to understand what type of situation we're talking about. It could. But, yes, I certainly understand what you're saying that it's water and so it needs to be managed; yes.

Q. Are stormwater assets designed based on expected maximum rainfall?
A. Yes, I believe they are.

Q. Okay. And are you aware of whether or not there is some degree of tolerance over above even the expected maximum to ensure the system's sufficient if there's an unusual event?
A. So I don't think we can design any stormwater system for the worst case event. They're always designed to a certain level. So you can't design a stormwater system to cater for every event, no.

Q. When do you expect the revised asset management strategy to be finalised and released?
A. That is a very good question. The council plan gets adopted soon. I would hope by the end of this calendar year we'd be bringing at least the draft to present to council and put out to the public.

Q. The way this works is a draft is circulated for public comment?
A. That is correct, yes.

Q. And then that public comment is taken into account by the council?
A. Absolutely, yes.

Q. And is the strategy then ultimately endorsed by the councillors?
A. That is correct, yes.

Q. And I'm sorry if you've just answered this but was it your evidence that you think that process will be concluded by the end of this year?
A. I'm not sure whether it will be concluded, but I'd certainly expect that we will have a draft prepared following the council plans being adopted pretty soon. I'm

trying to remember when it is. And we'll be then finalising and going through and making adjustments to the draft strategy prior to presenting to council, re-running the modelling and different elements as you said to make sure that what we've got - the information we've got is actually in there, and then putting that out to the community, which it does take a bit of time and this is the type of document that I would want to seek significant community feedback on because it does have a large impact on our community. So, you know, it might go out on public exhibition for six or eight weeks. So, in terms of being adopted, it might end up being after - sort of into next calendar year but, yes.

Q. Thank you. Descending down the document pyramid --
A. Yes

Q. -- is the next layer one that would include the stormwater asset management plan?
A. That is correct, in accordance with the new policy that's adopted. That's right.

Q. Thank you. And is that also in accordance with the asset management strategy?
A. No. You'll notice, as I mentioned before, the new policy has tried to really simplify to make sure that it's clear and the number of documents that we have have clear purpose. So it goes from the policy to the strategy then to the four major asset plans.

Q. I see. And so of the four major asset plans one is the stormwater asset management plan?
A. That's correct, yes.

Q. And the one that you have exhibited to your witness statement is dated September 2020?
A. That is correct, yes.

Q. Is that currently being revised?
A. Yes, it absolutely is. So our asset plans are renewed sort of on a cyclic basis one every year, and it's actually starting this financial - late last year. We've been reviewing the stormwater asset management plan to be able to put up and put a new one forward as well.

Q. Just to be clear: when you say one every year you mean, of the four, one is reviewed every year?

A. That is correct.

Q. Thank you. And the stormwater asset management plan is being reviewed this year?
A. That is correct, yes.

Q. I see. I'm not sure if I fully understood the effect of the evidence you just gave but is there no longer a close relationship between the asset management strategy and the stormwater asset management plan?
A. Can you rephrase that? What do you mean by that?

Q. The stormwater asset management plan is revised without regard to the asset management strategy; is that right?
A. No, it will be. So the asset strategy was being redrafted and looked at at the same time; like, they were both happening. We decided to pause both of those for a little bit while we got the final council plan endorsed so that we can then obviously make sure that it aligns with the new direction of our community and the new council. So basically we've - we'll be finalising that once the council plan is endorsed.

Q. So is it possible for the council to endorse the stormwater asset management plan before it has endorsed the revised asset management strategy?
A. I personally would not recommend that. It should flow and it should be talking to that strategy to make sure it's delivering on the objectives of the strategy.

Q. Okay. And so what's the expected date for the revised stormwater asset management plan to be delivered?
A. That is a very good question. I haven't got that exact date. But I'm hearing what you're saying and I'd certainly agree with what you're saying, that we need to get the strategy endorsed and that plan endorsed. It obviously needs to be very much integrated and hand in hand.

Q. Is it fair to assume that, if it's unlikely that the asset management strategy will be completed and endorsed by this year, that the stormwater asset management plan necessarily will be some time next year?
A. It is. But, you know, in certain circumstances we could certainly - the things we're looking at, water is important, is fast-tracking things like that. So I'm

saying this today because I haven't got an exact date. So I don't want to go and say a date that's not correct. But it could be within this - you know, this side of Christmas we could be getting these things completed; yes.

Q. Okay. And can you just explain at a high level the purpose of the asset management plan?
A. Yes. So I think as you've touched before around, you know, the policy sets, the principles and the guidance, I think the strategy more goes into the key objectives holistically what we're trying to achieve, and the key drivers and the asset plan then goes down to the next level around how we manage, I guess, each of the asset classes and more of the technical performance part of it.

Q. Thank you. The last of these policy type documents that I want to touch on is the flood and stormwater strategy.
A. Yes.

Q. The one that you've exhibited to your witness statement is dated May 2022; do you recall that?
A. I believe that is correct, yes.

Q. Is that the most up to date version?
A. I understand it is, yes.

Q. Is this document also being revised at the moment?
A. I believe, because of the flood mapping that is going on, to me it would make sense to be looking at that once that flood mapping's finished. That is actually overseen by a different directorate in terms of the strategy part as per the witness statement. But, as I mentioned before as well, there is a working group where all those teams do come together. So I certainly would see that being something that's looked at in the near future as well.

Q. Is it fair to say that staff members that work within your directorate will have input into the flood and stormwater strategy but not responsibility for it?
A. Absolutely.

Q. Thank you. And will you personally be involved in that document?
A. Yes, I will. The executive are involved in every document in terms of reviewing as they come through.

Q. I see. As is indicated by the title to the document it's principally concerned with flood risk; do you accept that?
A. Yes, yes.

Q. Do you accept that it doesn't consider landslide risk?
A. I can't - I'm not - without it in front of me, what I'll say is - I'm just trying to think through this. It definitely manages flood, which is obviously then - you know, water is a contributor, from my understanding, to landslide. So naturally it is, I guess, in principle. By managing water and things that are flooding, you are managing the risk of landslide. However, from certainly where I remember reading it through, if I remember correctly, it doesn't specifically call out, you know, landslides as such.

Q. And no other document does; is that right?
A. I'm not sure what - when you say document.

Q. Sorry, that's an unfair way of putting the question. Let me put it to you in a different way. There's no flood and landslide strategy?
A. That is correct.

Q. And no other document that exists at the level of this document that deals only with landslide risk in connection with stormwater?
A. Not that I'm aware of one, no.

Q. And your expectation would be if landslide risk was to be considered in that context it would be in this document; is that fair?
A. I think it should definitely be considered in - yes, either in this document or something similar. Yes, that would make sense.

Q. In that respect is it fair to say that council has learned more about landslide risk as a consequence of the 2022 and 2025 events?
A. I think that's a fair statement, yes.

Q. Are you aware of whether or not work is being done in connection with identifying landslide risk and building it into the strategy?
A. I am certainly aware of council as of Tuesday night adopted its budget, and within that budget there is a

project that is related to collecting updated data to inform landslide susceptibility, yes.

Q. All right. Let me jump forward a little. That document can be brought down off the screen, thank you. Let me see if I can get through some of these questions fairly quickly. Question 7 that you've answered was, "Describe the way in which the shire interacts, if at all, with other agencies, including VicRoads and Melbourne Water, in respect of managing stormwater assets in the McCrae area." And in your answer you have spoken of meetings that occur on a quarterly basis between the shire and Melbourne Water; do you recall that?
A. Yes, I do; yes.

Q. In fairness to you, you weren't specifically asked about South East Water. But are there equivalent quarterly meetings held with South East Water?
A. I've only been in the role for six months and we certainly have had a meeting. Like, I've had one with senior management at South East Water in my time. So I'm not sure how frequently that is. But obviously they must happen because it was not - I didn't request it and it was something that was put in the calendar.

Q. It was in your calendar?
A. Yes.

Q. Okay. But you don't know whether or not there is a quarterly meeting in your calendar?
A. No. So we did discuss that at that meeting that we need to catch up regularly; yes. So I don't know if it's in the calendar yet but certainly something that's been discussed that we will be; yes.

Q. You're aware that in the shire and in particular in the McCrae area there are a number of well-known, longstanding natural springs; you're aware of that?
A. I am now, yes.

Q. When you say "now", when did you become aware of that?
A. Through the process, yes.

Q. So which process?
A. Like, of the board of inquiry and obviously through --

Q. I see.

A. Yes.

Q. That wasn't something that you were aware of in your prior roles at the council?
A. No. Well, what I will say is that obviously I know there's a number of bores around the peninsula which obviously suggests that groundwater is in reach of surface level, if people have got bores.

Q. You are now aware of the fact that there are natural springs in the McCrae area?
A. Yes. Yes, I am.

Q. Right. I just want to ask you just a couple of questions about that. Does the council have any particular division of responsibility in respect of natural springs?
A. Not that I'm aware of. I've asked this question. Obviously when the landslide occurred and obviously things were happening at that point in time I certainly asked that question. But from my understanding from what I've - the information I've got available that, no, council has no --

Q. Accepting that they're slightly difficult to categorise within the scheme of infrastructure, is there a natural spot, directorate, within council that you would expect if responsibility was given for springs it would sit with that directorate?
A. I can't think of one off the top of my head. Obviously we have a water and coast team. It is water. But I wouldn't say that it naturally sits there just because that's in their title.

Q. You're not putting your own hand up?
A. I am happy - obviously, you know, as someone that likes to always solve problems, I'm an engineer, if there needs to be a team that looks at that and council was responsible, I'd be happy to make sure we're overseeing it.

Q. Do you accept that there's at least some natural link between springs and stormwater infrastructure in that springs are another source of water that will often have to be handled by the stormwater infrastructure?
A. I'd say no because the drainage network is generally - like, the most - the majority is a closed network. So groundwater generally can't get into that system.

Q. I see. To the extent that it can, that is to the

extent that a spring can flow and hit a hard surface and then travel onto a road or a kerb, then obviously the stormwater system's got to deal with it?
A. Absolutely, and the road as well. So I think within my witness statement I make comment around that if it is impacting one of our assets we will absolutely make sure that we are responding and fixing that asset to make it safe.

Q. Are you aware of whether there's any consideration being given within council as to whether springs ought be identified as an area of responsibility of a particular directorate within the council?
A. Not at this point in time, no.

Q. I mentioned early in your evidence the fact that there was a stormwater drainage project undertaken by the shire in respect of Prospect Hill Road and View Point Road in McCrae in June 2023?
A. That is correct.

Q. And you've answered some questions in relation to that project. Because of the role that you were then in you weren't personally involved in that project; that's correct?
A. That is correct, yes.

Q. All right. But this, as you said before, arose by reason of a condition assessment that was conducted in 2019?
A. Yes.

Q. 2019 identified that - sorry, it was identified in 2019 that there was a need for renewal works?
A. Yes.

Q. Those works didn't occur until May and June 2023. Is that an ordinary sort of period between identification of a need for renewal and the renewal taking place?
A. Yes, I'd certainly say it's not unusual. So when we do that you identify probably what are the kerbs over the next four, five years between the next assessment, and we generally need to be able to adjust the program because we do try and align our kerb and channel renewal program with our resurfacing program, so when you resurface a road, because it's very poor practice to go and resurface a road and then come back the next year and dig out all the edges

and put new kerb and channel down. So quite often we do have to sort of adjust and tweak the program as we go to really make sure we get the best value for community and the outcome. So there is sort of flex in when we - you know, as we move through the programming of those works.

Q. All right. Are you aware that after - in the period after the 2022 landslide and in particular in the months immediately before the 2025 landslide there were reports of significant amounts of water flowing in the McCrae area? Are you aware of those two facts generally?
A. Significant volumes of?

Q. Water?
A. Can you rephrase that? I'm not sure how to --

Q. Yes, sorry, let me break it up and do it in two parts. Are you aware that before the 2022 landslide there had been reports of significant volumes of water flowing down Prospect Hill Road and View Point Road?
A. I didn't know it was significant. I understood there was water that flowed down the road from reading - not - I didn't know beforehand but from the information that's provided for me, it appears that there absolutely was water flowing down that kerb and channel because there are properties that pump water out of natural spring - because of the natural spring is what I've learnt since in reading all the information. So there was water flowing down the kerb and channel. But I wouldn't say it was, like, large volumes as such.

Q. I see. I see. But it was water that was flowing, including during dry periods where there hadn't been rain?
A. That is - from what I've read, it would appear that's the case, yes.

Q. And that is part of the reason why I asked you whether or not there was to some extent a natural link between stormwater infrastructure and natural springs because there are circumstances such as here where a spring is feeding straight into, in effect, a stormwater system?
A. Yes, that is correct. Yes.

Q. All right. Do you think that in circumstances where the condition assessment identified the need for renewal works in 2019, and where there was a constant flow of water, and where this area is at the top of the hill that,

on reflection, accepting you weren't responsible for this at the time but on reflection those sorts of circumstances are circumstances that ought to trigger a quicker response to the need for renewal and reconditioning of the asset?
A. I'm not sure I would say that. If the water's not causing - like, it's not actually - like, it's only a small amount of water flowing down a kerb and channel it certainly is wearing out the kerb and channel quicker. It's not great from an aesthetic and visual point of view. But I don't see that as an immediate trigger saying that's a risk to anyone.

Q. Are you aware that there's at least a thesis that cracks in kerbs and associated infrastructure can cause the seepage of water that would otherwise flow directly along the kerb into the hill? Are you aware of that?
A. Yes, I believe, like, a very small amount of water could seep through; yes.

Q. But it may be a constant seep?
A. I'm not sure about - yes, I'm not sure, but --

Q. Well, I think you accepted before that the natural spring in question here meant that there was a constant flow of water, including in dry spells; do you accept that?
A. I'm not sure, but it could be, yes.

Q. I see. All right. But at least if that is true then the constant flow of water might mean, although it doesn't look like a large amount of water in the kerb, some of it going into cracks, and those cracks being in effect constantly fed with water?
A. That sounds correct to me, that there's definitely - if there's water constantly flowing it would flow, then just a small volume would sit within the road pavement, most likely, yes, in the adjoining road pavement; yes.

Q. And are you aware of whether or not that type of event - constant flow of water with poorly maintained kerb meaning seepage of water outside of the stormwater system - is capable of potentially being more risky in a hilly area rather than a flat area?
A. I think it would have to be an extremely large volume of water. I could certainly see that it's not good for the kerb and channel, the direct asset that's there and the road next to it. But if it's small volumes of water I'm not sure that I'd draw that kind of conclusion. But, yes.

Q. I understand. If there came to be expert engineering evidence to the effect that volumes of water that can pass through cracks of that kind on a constant flow are at least capable of being material to landslide risk, that is they might cause some presaturation of an area which might increase the risk of a landslide event if other circumstances occur, do you accept that that's information that you would then need to find a way to feed into your system and your maintenance program?
A. I think that would make sense; that, yes, if there's evidence that suggests that something is a problem or a challenge or an issue we should absolutely be addressing it, yes.

Q. Thank you.
A. It's probably worth saying, though, the volumes we're talking about. Like, I just think about, you know, irrigation, for example, would be contributing far more in that situation than any small volume of water in a kerb and channel. But, yes.

Q. I said before that it was identified that this particular part of the stormwater system needed renewal works in 2019. In fact at paragraph 39 of your statement you say that a survey of the kerb and channel sections along the stretch of road from Prospect Hill Road to the end of View Point Road was conducted in November 2017 by DM Roads. Do you recall saying that?
A. That is correct.

Q. And you then say the survey data was then used as the basis for a desktop condition assessment by the shire in 2019?
A. That is correct, yes.

Q. So the assessment that was done in 2019 that determined that the condition assessment was such that there was a repair necessary, that was actually based on 2017 data; is that right?
A. That is correct. Just to help you understand, so the data's actually collected as part of our road condition inspection program using cameras of vehicles down the road. So at the same time they collect footage of the kerb and channel. And then we use that later to then go back to and do the condition assessment of the kerb using the same footage to save - obviously be more efficient and cost

effective.

Q. I see. So that's a more efficient and cost-effective way of collecting the data. But, just in terms of the timeframe, data collected in 2017 is then assessed at some point in 2019 resulting in a repair in May to June 2023; that's the sequence for this particular one?
A. That is correct, yes.

Q. And there's nothing unusual about those types of timeframes in your experience?
A. No, because we've also got obviously inspectors that drive our road network to do inspections. And so anything urgent that's sort of an urgent, immediate safety issue gets picked up in those defect inspections in between and fixed.

Q. I see. Now, if this was identified as a flood-prone area would that timeline be abbreviated? Would you expect the repair to occur more quickly?
A. That is a very good question. I would say that is a factor. For example, if we knew that there was high volumes of flooding being caused because of it then, yes, I think absolutely you'd respond because you've got your condition and you've got a known flooding concern. So, yes, I think you would; yes.

Q. Is there some process to expedite repairs in particular high-risk areas?
A. Yes, that's probably where the working group comes in to play. We have got the maintenance people talking with the strategy people so that when you're looking at all the things together you can then obviously make those calls to say, "Hang on, we know we've got an issue here actually at hand where there's flooding, and the modelling is saying this. So this actually probably - we need to look at should we elevate this project for consideration even sooner."

Q. And is there some sort of policy document that sets out that process?
A. I think it's more our capital works program development process around how we prioritise projects is one of the areas, and that working group is probably where it is. And the asset management plan, one of the things I've certainly identified since coming into my role is that I want to ensure moving forward that we're building our

longer term programs around - within the stormwater - like, the plans themselves and having, I guess, more of a pipeline over a longer term will be something we're looking at doing.

Q. I see. Do you recall that when I took you to the asset management strategy there was an assessment of the quality of the infrastructure and we had a discussion about that and you explained that that's really a measure of age only and the quality of the stormwater infrastructure within the council was said to be 99 per cent; do you recall that? Sorry, it was not described as a stormwater infrastructure; it was described as the drainage infrastructure?
A. Yes.

Q. In the flood and stormwater strategy at 7.2.2 there's a statement that says, "Over half of the shire's drains are at least 30 years old. This means there is significant probability that there are drains which have been distressed and are no longer operating close to the optimum efficiency."
A. Would you mind bringing that up for me just so I can make sure I'm looking at it? Thank you.

Q. It's MSC.5057.0001.1410. So this is the document. You'd be familiar with this document. And if we could go to internal page 21, please. It might be 1430. Do you see there 7.2.2, "Asset condition review", and the paragraph I just read to you was the first paragraph. But just read that.
A. Yes, I can see that.

Q. All right. You've seen this document before?
A. I have, yes.

Q. Okay. Do you think that a statement like that really indicates the fact that the 99 per cent quality assessment in the strategy document is a misleading statement?
A. With what I know I'd say that I don't think it would be sitting at 99 per cent right now, that's for sure.

Q. Do you think it would have been sitting at 99 per cent at any time?
A. Potentially not. I think at the time when this was being pulled together it's been used the best information available to the team and they've gone off age and come up

with some sort of way of doing that, where I think we'd be far more sophisticated now with the knowledge we have with this strategy, with the flood mapping. Even with our 0.5 per cent of the network that we've CCTVed proactively, I think we could probably, yes, definitely come up with a different number this time around, that's for sure.

Q. All right. Thank you. I might just bring up your third statement. MSC.9000.0002.0199. Could we go to page 10, please. Could I just ask you to look at paragraph 40. I just want you to explain this to me and then I'm going to move to a different topic. Let's just work through it, perhaps. You start by saying, "During the 2019 assessment of the View Point Road kerb and channel it was also identified that the existing drainage infrastructure in the area did not provide a continuous flow through a connected stormwater network." Can you just explain what that means, a continuous flow through a connected stormwater network?
A. I'll do my best and I'll try and do it slowly. So the way that the drainage was originally designed was that it actually got to a certain point where there was a pit and then no - the pipes don't continue down the road further. So basically it hits a point. It actually comes up out of that pit and runs down the kerb and channel to the drain at the bottom. So it basically uses the kerb and channel and the road as the pipe network. What this - so that's what I'm saying in terms of a continuous flow. It didn't continue within underground drainage all the way to that final point where it released out into the - yes.

Q. So when it said - you go on to say, "This was because of the underground piped drainage system from upstream terminated adjacent to 4 View Point Road." Is that where the pit is?
A. Correct.

Q. I see. And what's the role of the pit?
A. The pit is basically the final destination of that pipe where it comes into that pit. It obviously hits a certain point and then flows out onto the kerb and channel and down into the very bottom pit of View Point Road.

Q. I see. So the pit retards the flow but it doesn't correct it?
A. Correct. Correct.

Q. And is that viewed as being something other than

ideal?
A. Yes. Like, ideally from an aesthetic point of view and from a useful life of the kerb and channel, in an ideal world you want the water to be running under the ground rather than through the kerb and channel wearing it out.

Q. And would the reason it had been done that way be an historic reason in that sometimes that's how things were built but they're not built like that anymore?
A. That's right. Like, for example, View Point Road - and I don't actually - I'm going to assume here, I don't actually know this, View Point Road may have been built first and then the other roads when they're built were then built with a different approach to the drainage network and then just connected in with that, potentially. As I say, it's just a - I'm not sure.

Q. You say there at the end that, "It was observed that water was pooling in the kerb and channelling along View Point Road, causing the growth of algae and accelerated deterioration of the kerb and the channel.
A. Yes. From the information I reviewed that's what I took from that; yes.

Q. There's been other evidence given in the course of this board of inquiry, including by Mr Borghesi, as to the growth of algae in the kerb area. Is the growth of algae in kerbs the sort of thing that council officers or their contractors would be looking for as an identification of a stormwater system that's not working to plan?
A. I think it would certainly say that water is sitting in a location and not - you know, where you want to keep it moving. So it's obviously a damper area, yes.

Q. There's been some evidence given I think by Mr Borghesi of trucks vacuuming algae out of the kerb. Is that something that council has a contract for a contractor to do?
A. I'm not aware of that. That's the first time I've heard that. But, yes, I'm assuming once again the trucks that come to clean out pits that have big vacuums on them and suck out material out of pits potentially could be used, or a street sweeper may do the same - have the same effect. I'm not sure.

MR COSTELLO: Thank you. Madam Chair, I'm going to move to another topic. I've probably got another 15 minutes

with Mr Smith. Would that be a convenient time to take the morning break?

CHAIRPERSON: (Inaudible).

SHORT ADJOURNMENT

MR COSTELLO: Mr Smith, I just want to ask you a couple of last questions on the topic that we were dealing with before the break, that is the kerb and the kerb stormwater replacement Prospect Hill Road/View Point Road. Do you know whether - sorry, let me rephrase it. Do you know how old the kerbs were that were replaced?
A. No, I'm not sure.

Q. Are you aware of whether they were the original kerbs that were first built?
A. No, I'm not sure, sorry.

Q. Okay. And we've been talking about those works in the context of the stormwater system, but it's right, isn't it, that before these works the stormwater system Prospect Hill Road and View Point Road was the kerbs; there was no subterranean system?
A. That is correct. So it came around the corner slightly into View Point Road and then there was a pit, and then as water would come down it would come out of the pit and down the road and the kerb, yes.

Q. I see. The identification of the kerbs as needing replacement in 2019, is it at that stage, in 2019, that the extent of the rejuvenation or replacement is determined, or does that happen later?
A. From the information I've been provided it's really difficult to tell exactly at what point, whether it was when they were out there scoping it up and reviewing it that they identified that it'd be - obviously the optimum idea is to do that to protect the kerb into the future. But I'm not sure from sort of information I've seen exactly at what point kind of that decision was made.

Q. All right. You don't know then whether or not there was any change in the scope of the works that were performed there from the time it was identified in 2019 to what was actually done?
A. Yes, no. I'm not sure, no.

Q. Thank you. All right. I want to move to a different topic, which concerns the January 2025 landslide, and you've given some evidence about some matters in your second witness statement, which I'll just call up for convenience. It's MSC.9000.0001.0003. The fourth question that you were asked is set out on page 5. I'll just show it to you. Do you see there the board of inquiry's investigating the potential influence of the 5 - on the 5 January 2025 landslide in the McCrae landslide of a burst water main?
A. Yes, I can see that. That's in front of me.

Q. And the first question was when and how the shire first became aware of the burst water main?
A. Yes, yes.

Q. And your evidence is that the shire didn't become aware of there being a burst water main until on or about 2 January 2025?
A. Yes, from the information provided to me that's when the first time a shire employee, I can see, yes.

Q. 2 January 2025 you were in your current role?
A. Yes, I was. I was on annual leave at the time, but I was in my current role, yes.

Q. And in terms of notification of this type of event is a notification likely to come to somebody within your directorate?
A. Of the actual event itself?

Q. Of the fact of a burst water main?
A. Not that I've seen in the past. I'm not sure, like - yes, I'm not sure. Yes.

Q. Is there some clear system for reporting these types of events between South East Water and the council that you're aware of?
A. Not that I'm personally aware of, no.

Q. Okay. It's the type of - a burst water main is the type of event that might have a number of effects, but you'd accept that many of the effects would ultimately have to be dealt with by people within your directorate; is that fair?
A. I'm not sure. It depends what - where it is and what - yes, there's a lot in that one. I'm not sure how to

answer it.

Q. Well, a burst water main might quite obviously at least be relevant to the stormwater system?
A. Yes, yes. Yes, I understand what you're saying now. Yes, definitely. If water's escaping and it's on a road, for example, it's going to impact our asset, yes, yes.

Q. Yes. Your directorate responsible for road maintenance?
A. Yes, that is correct.

Q. All right. So to the extent that there's any adverse effects on road infrastructure or stormwater infrastructure it lies within your directorate?
A. That is correct.

Q. Okay. And would it be useful for you to have a clear protocol for the identification of water main bursts so that you can take appropriate steps?
A. I think that would be very good, yes.

Q. All right. Is that the sort of issue that you've turned your mind to before today?
A. I think, yes, yes, we have. I have.

Q. Are any steps being taken to put some sort of protocol or process in place?
A. I wouldn't say there's an exact protocol, but I believe conversations have been had between South East Water and us about, you know, obviously notification of different things, yes.

Q. All right. When you say you believe conversations have been had, you've been told by others within the council?
A. Yes, I believe the director, for example, of McCrae landslide has had conversations and meetings with South East Water, yes.

Q. When was it that you met with South East Water?
A. I can't recall the exact date, unfortunately. I can't off the top of my head.

Q. Was it some point this year?
A. I think it was. It was pretty early, not long after I had started in the role. I started in November. It

could have been. I can't remember exactly the date, yes.

Q. Is this something on your agenda to discuss with South East Water?
A. It certainly will be, yes.

Q. You're aware that the burst water main in question here had been burst for some time before 2 January?
A. From the information I reviewed - there wasn't a lot, but there was one email, which once again I don't know how correct it was, that happened to mention that the person that had been liaising with South East Water somehow had mentioned in the email four to six weeks was the - I believe in there, was mentioned that it had been known, yes.

Q. And are you aware of any other evidence given by council officers about the state of the council's knowledge of the water main burst?
A. No, not before that date, no.

Q. Okay. On the assumption that the water main had been burst for four to six weeks before council became aware of the fact, does that cause you any concern or does that strike you as something that's not unexpected?
A. Certainly in hindsight finding that out after the fact of everything that's happened, I would think that, yes, it's something that - high volumes of water escaping and potentially flowing into either council assets, Department of Transport assets, I think that it would be ideal to make sure we have a process that we would know about that, yes.

Q. Are you aware - no, sorry, let me rephrase that. When you say council became aware so far as you know of the fact of the burst water main on or about 2 January 2025, are you including there contractors of council?
A. No. So in my - certainly looking through the information, from what I have seen, the earliest date that I can sort of see with any information is I think the 31st via a phone call between our contractor and South East Water, was the first time that the contractor became aware.

Q. All right. And would you expect a contractor to report that type of information back into the council, or is that something within the contractor's discretion?
A. Yes, absolutely, and that's why they did email us to tell us, yes.

Q. I see. So is your evidence that the contractor became aware on the 31st and informed the council on the 2nd?
A. There's an email on the 2nd. I'm not sure whether there's other correspondence in between, as I said, but from what I've got to sort of look at, the information provided, that's the date that I can find that an email was sent clearly, yes, in writing, yes.

Q. And in the way that the council's infrastructure maintenance works, absent a notification from the relevant water authority it's fair to say council would be heavily reliant on this information being relayed to it by its contractors; do you accept that?
A. Yes, yes.

Q. And I think you say in one of your statements that council and its contractors work very close together, they're part of the council family, something to that effect?
A. Yes.

Q. And so are there any particular requirements that you're aware of for council contractors to feed this type of information through, or is it just something you would expect them to do by reason of the relationship?
A. Yes. So certainly, depending on obviously the scale of what we're talking about, and at that point I don't think there was any indication of the actual scale, like, yes, it was mentioned I think that there had been a burst water main, but I don't think with that was any kind of understanding of how big or small that was. So in that situation I'm not sure whether they would necessarily automatically notify council if it wasn't impacting any council assets at the time, yes.

Q. The officer of the contractor who became aware in late December 2024 of the fact of the burst water main, is that Jenna Kirk? Is that who you're talking about?
A. That is correct, yes.

Q. So in preparing your witness statement you've gone through council records and documents, and you've ascertained that on 31 December Jenna Kirk had recorded that she had been told by South East Water that there was the burst water main at Outlook Road and The Boulevard?
A. That's my understanding from the correspondence I've

seen, yes.

Q. Okay. And you know from the document that you've seen from Ms Kirk that she had also said that South East Water was managing customer issues with respect to groundwater reports on Charlesworth Street?
A. Yes, I've certainly read that, yes.

Q. South East Water had confirmed that a stent had not stopped the flow of water and that South East Water was still investigating it?
A. That's what was in the correspondence, yes.

Q. Okay. Just explain to the chair what you would expect in your role now as head of your directorate to be done upon information of that kind being received by one of your staff? Is there any necessary reaction to that, or is it something that a particular person ought be made aware of? What would the process be?
A. So if it - obviously an unknown - if it wasn't impacting anything that we were aware of, I wouldn't expect anyone to be notifying anyone at that point in time. There's water bursts happens all over the peninsula at different times and different things that happen. So at that point in time I don't think I would have expected, based on the information at hand, that it would have been an immediate flag to be flagging that up the chain at that point in time.

CHAIRPERSON: Is that still the case, Mr Smith, if the burst is in the vicinity of an area where there had been a few years earlier a landslide?
A. I think that would change things, yes.

MR COSTELLO: Can I just take you, please, to paragraph 23 of your statement on page 9. Do you see there you speak about causing other shire officers to conduct searches with Fulton Hogan, who were the contractors at the relevant point in time, and you've then set out there part of an email from Ms Kirk to shire officers. Now, just so I can understand the sort of reporting chain, if you like, who was Ms Kirk sending this to? I'm not so much interested in the name of the person, but what role were they occupying and where does that sit within your directorate?
A. So that's the contract manager, and the contract facilitator is to advise them, which is the appropriate process.

Q. I see. So the principal point of contact between the contractors and the council is the contract manager?
A. That is correct.

Q. And did you say liaison?
A. Then there's contract facilitators that also work together with the contractors, yes.

Q. All right. Depending on the information that is relayed by the contractor to the, let's say, contract manager, it would then be for the contract manager to notify other relevant people within the council; is that how it works?
A. That is exactly how it should work, yes.

Q. To continue the comparison that I used earlier, if information of this kind about a burst water main that had been burst for four to six weeks came through from a contractor to the contract manager and the burst was in an area that was flood prone, would you expect that information to be escalated within the council?
A. If we understood I think the volume. Once again, like we - hypothetical is here, like, around the volume we're talking, we've got no sort of understanding at all around what we're talking about and the impact, and given the location of where this burst was, for example, it wasn't directly impacting, on face value, being on the other side of the freeway. So I wouldn't in this particular situation. I think if there was somewhere where immediately you could see that this is a risk I think then it would absolutely be escalated up the chain of responsibility, yes.

Q. Right. In the third paragraph extracted there from the email you'll see it says, "SEW have confirmed given the amount of water (flowing now for nearly 6 weeks) it is not an MPS stormwater concern. Recent update as at 2 January 25 is that another leak detection team are heading down to further investigate. An update is also being provided as we speak to be sure to advise residents that the issue it under the management of South East Water." You see all of that. So it is known by this email flowing now for nearly six weeks and there's a mention of volume of water, and earlier in the email there's mention of impact to both private property and MPS assets. So I understand this is a hypothetical question, but it's designed precisely to be

because what I'm trying to test here is risk management systems within the council. If that sort of email came through and the contract manager identified that the area where the burst had occurred was an area that was prone to flooding, would there be steps that the contract manager was obliged to take to notify other officers within council?
A. I don't think there would be an exact procedure written there that says in this situation it would be common practice that that's what we do. We know that it's, you know, the person goes and does an inspection, identifies that there's a risk of what's happening, that they would absolutely then be bringing in the right people to have the conversations to look at what the solution might be, yes.

Q. I'm just interested in how the council identifies and responds to risk. So you can think of it in terms, for example, of a heat map across the council area and a heat map prepared for stormwater infrastructure. Particular failings will be potentially generative of very serious risks, and that will depend on the nature of the failure and where the failure occurs. Now, it takes quite an amount of information to have that degree of sophistication in risk management, but it seems to me that the process within the council is a long way from that. There is ad hoc notification by contractors to the contract manager, who may or may not escalate the information at all. Is that a fair description of the internal processes of the council?
A. First of all, I'd love that heat map, if we can certainly get that. That's something I would love for us to have. I think that would really help our practices around risk and asset management. I wouldn't say it's ad hoc. It's clearly written contractually around notification in terms of customer service requests. We actually use exactly the same systems in general, like, as the contractor. So we've got access to most of the customer service requests and access. But, you're right, when it's, for example, in a phone call and then potentially it's something that's happened - like, as we've seen here, it's an email - not within the system, it's certainly something we need to think about moving forward around how we make sure that we do have those processes as robust as we can, yes.

Q. Okay. That paragraph can be brought down, please. A

related aspect to all of this is the fact that there had been a number of reports from local residents in McCrae of large volumes of water passing through the stormwater system. You're aware of the fact that there had been those types of reports?
A. Yes, when they were out on site. We understand that, yes.

Q. Yes. And residents talking about water roaring through the system, those types of reports? You --
A. I am now, yes, yes, from reading the information, yes.

Q. Now, when there's not been heavy rain and residents are reporting hearing very large volumes of water through the stormwater system, do you accept that that is a reasonably strong indicator that something's gone wrong?
A. Yes, and I believe that's why our obviously contractor was in constant contact with South East Water asking for something to - you know, further investigations, that we believe something's going on here, to try and find the source of the issue, yes.

Q. Based on your review of the documents that you've seen coming to prepare all of your evidence for today, do you think the council could have and should have done more, or are you content with the steps that the council took as being appropriate?
A. It is a very good question that I have thought about a lot around, you know, always looking to continuously improve and what can you do. When I look at the information provided I can see clear evidence of continual follow-up with South East Water, asking/requesting for it to be followed up, and obviously our contractor responded. So, in terms of when the original request came around the pothole within the road, we went out and responded, made it safe and fixed it. When the water continued to flow, we went back out to make it safe again based on what was out there. So, in terms of responding to the issue at hand, yes. Obviously in hindsight, now that we know what happened with the landslide, you can look at a bigger picture and go to yourself, "What else can we do to make sure we look at our processes to say is there a way," and, coincidentally, your mapping thing was one thing that I thought to myself wouldn't it be great to have like a heat map that shows you, hang on, you've had 15 requests in this one spot, is this telling you something. They're the types of things that I would certainly love for us to be

looking at in the future on how we might be able to - be able to see that type of bigger picture playing out.

Q. Are these types of conversations occurring within the council at the moment?
A. So as part of that review of the, for example, stormwater asset management plan and our strategy, and obviously we obviously have APCG now looking at the responses around what we're doing to help drive that. Absolutely. All these things, including what comes out of the board of inquiry, we should be putting and looking at all of the different opportunities to improve whatever we can.

Q. We spoke earlier about the revision to some of the important council documents, including the stormwater asset management plan and the shire asset management strategy. Has a date been set internally for when that work is to be completed and those documents finalised?
A. Is that the same question you asked me before? The - yes. No, not date - not set yet, no. No.

Q. Do you expect a date will be fixed for those reports to be finalised?
A. We definitely will. So we'll be looking - once the council plan's endorsed and we've got that done, we'll then map out the timeframe and then be able to complete the plan, the steps through council. It is quite a long process by the time you go to council, get it endorsed to put on public exhibition, go out to the public, get all the feedback and then come back to get it adopted. So it does take a bit of time, but we will be working on that, absolutely.

Q. Do you want the asset management strategy finalised before moving to the stormwater asset management plan?
A. We will be concurrently working on those because we - as I say, we are as we go anyway, so that it would follow soon after. It's not going to be we have to wait for it to be completed. We'll be working on it along the way, updating them together to then endorse them at the end.

Q. I follow. They won't be endorsed at the same time but --
A. Closely after, yes.

Q. And it's, if you can believe it, close to the end of

June already. Realistically, this isn't going to be done this year, is it?
A. We will definitely have a draft. So the strategy, as I mentioned, we'd already done work. However, there could be learnings, for example, like the stormwater is a classic one, and obviously with an asset strategy every opportunity is a learning opportunity, and I'm sure the board of inquiry, what comes out of this, there could be relevance, as we know, to be built into these things as well as all the other community feedback that we're receiving, the learnings, the things we've been doing in between. So, yes.

Q. Apart from those specific documents that we've just been discussing, there's also a general stream of work going on within the council to ascertain what can be learned from these events and the inquiry; is that fair?
A. Absolutely.

Q. And is there some sort of formal working group that you're aware of?
A. Yes, there is, yes.

Q. Are you on that?
A. I am, yes.

Q. And does the work of that group include potential reform of internal policies and practices so as to better deal with landslide risk, for example?
A. It absolutely could and will. So, yes, basically at the moment it will be looking at what we know to date, and as we learn things we'll then be looking at how to expand what we actually look at and what we can improve.

Q. Is that a formal committee?
A. Yes, it's a project control group, yes.

Q. I see. And it's got a fixed membership?
A. Correct.

Q. I see. And who chairs it?
A. I believe it's the director of McCrae landslide incident.

Q. I see. Does it meet regularly?
A. It has met, yes.

Q. It has met once?
A. Yes, correct, yes.

Q. Only once?
A. Yes.

Q. When was that?
A. That was this week.

Q. When was the committee established?
A. A couple of weeks ago. Just to confirm, obviously we've had a team working on this and a range of things. This is just more formalising towards looking at what we actually do longer term. So obviously there's been the short-term response and improving what we can in the short term, and then this is about what are we going to do, as you say, systematically, what have we learnt and what can we actually do to improve all of our practices. Yes.

Q. Was the first meeting just a formal meeting to convene or was there substantive discussion?
A. It was to go through the initial recommendations, the draft recommendations, of the - I think it's the risk-to-life report that was done. Yes.

Q. And did you have input into the deliberations of the committee?
A. Yes. So we just looked at those recommendations and started working on, you know, how we can start looking at those now rather than waiting for the board of inquiry to finish, and what we might be able to do to really get the wheels in motion on some things that we could be doing.

MR COSTELLO: Madam Chair, I have no further questions.

CHAIRPERSON: Thanks, Mr Costello.

MR COSTELLO: I suspect at least one other person at the Bar table does.

MS SIEMENSMA: Madam Chair, I seek leave to ask about an issue. I have raised it with Mr Costello.

CHAIRPERSON: Yes. You have leave.

<EXAMINED BY MS SIEMENSMA:

MS SIEMENSMA: Mr Smith, my name's Ms Siemensma, and I appear for South East Water. I just wanted to ask you about one issue, which is a question that Mr Costello asked you about this morning, being the 14 November 2022 water main burst in the vicinity of 23 Coburn, and in your witness statement you had said that the shire was not aware before 5 January this year about that water main burst. A Mr Julian Tully of South East Water will give evidence next week --
A. Yes.

Q. -- and Mr Tully's evidence will be that the 14 November 2022 water main burst was in fact reported by the council to South East Water.
A. Yes.

Q. His evidence is a Ms Michelle Thwaites of the council reported it on 14 November 2022 at 1.41, and she provided a photograph, and I can just pop up that photograph for you - thank you. This is a photograph that Mr Tully will say was provided by the council. The metadata showed that it was taken at 11.57, provided at 1.41. Against that background, do you dispute Mr Tully's evidence that the council was in fact aware of the burst in this photo as at 14 November 2022 at 1.41?
A. I can certainly say that is the fact, and you've got all the dates in front of you. I believe that. It's just not what I - I hadn't been provided that to know, that's all.

MS SIEMENSMA: Thank you. No further questions.

CHAIRPERSON: Ms Foley?

MS FOLEY: Madam Chair, I neglected to run this past my learned friend Mr Costello, but I do have a brief couple of questions for Mr Smith, if that's convenient. Thank you.

<EXAMINED BY MS FOLEY:

MS FOLEY: Mr Smith, do you have your third witness statement there?
A. I don't. It's not in front of me, but I could refer to it.

Q. If we could have the third witness statement brought up, please, and that is MSC.9000.0002.0200. We'll just

wait for that to be brought up. Thank you. And if we could go to the next page, please. If I could ask you to look at question 1 on that page. You can see that?
A. Yes, I can see that, yes.

Q. And you can see that you were asked a question in question 1, and then you can see the language, "If so, describe," and then you were asked three further questions?
A. Yes.

Q. And you'll recall that Mr Costello asked you in particular about subparagraph (c)?
A. Yes.

Q. And I think it was put to you that your answer to question 1 didn't specifically address that part. Do you recall that?
A. I think I do, yes.

Q. Was it your understanding that question 1 was asking you to address subparagraphs (a), (b) and (c) if your answer to question 1 was "yes"?
A. Can you repeat that again for me?

Q. Sure. Was it your understanding or not that you were being asked in question 1 to address subparagraphs (a), (b) and (c) only if your answer to the first part of question 1 was "yes"?
A. I'm not sure, to be honest.

Q. All right. And in any event you can see from your answer to question 1 that your answer was "no"?
A. Yes.

Q. Right. You were asked some questions about the awareness that the shire had of the burst water main prior to 5 January 2025 landslide; do you recall that?
A. Yes, yes.

Q. And your answer had focused on the road openings report; you recall that?
A. Yes, I do, yes.

Q. When my learned friend Mr Costello asked you some questions you gave evidence that you had spoken to the asset protection manager and asked for what information was available; do you recall that?

A. Yes, yes.

Q. If South East Water had provided a formal notification to the shire about a burst main, would you have expected it to have been in that person's knowledge?
A. Can you repeat that again?

Q. Yes. If South East Water had provided a formal notification of a burst water main to the shire, would you have expected it to be within the knowledge of the asset protection manager?
A. Not necessarily, no.

Q. All right. And would you have expected in the course of answering this question to have been provided with any formal notifications from South East Water in order to answer question 1?
A. No, we haven't, no.

Q. Sorry, just to be clear, my question was would you have expected to be provided with whatever information was held by the shire by way of formal notifications in answering question 1?
A. No, because it was related to asset protection.

MS FOLEY: I understand. Thank you. No further questions.

CHAIRPERSON: Mr Costello, anything further?

MR COSTELLO: No further questions, thank you, Madam Chair.

CHAIRPERSON: Mr Smith, that completes your evidence. Thank you for coming today to assist the inquiry.
A. Thank you very much.

<THE WITNESS WITHDREW

MR COSTELLO: Madam Chair, there needs so be some reconstitution of the Bar table. Could we take five minutes before the next witness? Thank you.

SHORT ADJOURNMENT

MR COSTELLO: Thank you, Madam Chair. I call Claudio Flores.

<CLAUDIO ALBERTO FLORES, sworn:

<EXAMINED BY MR COSTELLO:

CHAIRPERSON: Take a seat, Mr Flores. Mr Costello will ask you some questions.

MR COSTELLO: Mr Flores, could you just say your full name again, please?
A. Claudio Alberto Flores.

Q. And your business address?
A. Number 2 Queen Street, Mornington.

Q. Thank you. And your current occupation?
A. Building surveyor.

Q. All right. Mr Flores, are you employed by council?
A. I am, yes.

Q. All right. Thank you. And you've been employed by the shire since around August 2015?
A. Yes, I'm coming up to 10 years.

Q. In that time you've held various roles?
A. Yes.

Q. Have they all been concerned with building surveying?
A. Yes, they have.

Q. And what training did you do to become a building surveyor?
A. I hold an advanced diploma in building surveying. A lot of the training is done, I guess, as you're working in the field.

Q. I see. At the time of the 15 November 2022 landslide you were the shire's senior building surveyor?
A. Yes, I was.

Q. And could you just explain the ranks, if you will, within the building surveying department at the council?
A. At the time of the '22 landslide?

Q. Yes, to start with that would be useful; thank you.
A. At the time we had a municipal building surveyor, or

MBS. Underneath the MBS were several building surveyors. And the words "senior building surveyor" would relate to the registration type that that surveyor held. For example, myself, a building surveyor unlimited, held the title of senior building surveyor.

Q. Did you say "building surveyor unlimited"?
A. Building surveyor unlimited, yes.

Q. Somebody who was licensed or accredited as a building surveyor unlimited held the title within the council of senior building surveyor; is that the effect --
A. At that stage, yes.

Q. I see. Thank you. And what's a building surveyor unlimited to be contrasted with? What's the other type?
A. Building surveyor limited. There's limitations on --

Q. It's pretty obvious.
A. -- the types of building that one can work on.

Q. I see. And when did you become unlimited?
A. I can't recall. It was some time before COVID.

Q. Okay. So at the top is the MBS?
A. Yes.

Q. Beneath the MBS there are several building surveyors?
A. Yes.

Q. Some of whom are senior building surveyors?
A. Yes.

Q. And others of whom are just called building surveyors?
A. Some who might be an inspector.

Q. I see.
A. Or an assistant building surveyor, or a cadet. The structure is a little different now.

Q. I see.
A. Where we have the municipal building surveyor, we do have the deputy municipal building surveyor.

Q. I'm sorry, did you say a deputy?
A. A deputy, yes. And then my current role is principal building surveyor. I look after the approvals side of

the unit. That relates to reporting consent applications, places of public entertainment permits, but I also do some of the enforcement work that we do.

Q. I see. So in 2022 when you were a senior building surveyor you reported to the MBS?
A. Yes.

Q. Now you're principal building surveyor. To whom do you report?
A. I still report to the municipal building surveyor, yes.

Q. In December 2022 you were appointed the acting MBS?
A. I was, yes.

Q. And you held that role until February 2023?
A. Yes, for a few months until we were able to find a replacement MBS.

Q. And that replacement was Mr Glover?
A. That's right, yes.

Q. And when Mr Glover came on to the staff you returned to your role as a senior building surveyor?
A. For a time, yes. There was also a time I acted in the deputy role for a short time.

Q. I think you acted in the deputy role between November 2022 and - no, it can't be that long. It wasn't between November 2022 and 5 January. It was at some point in the period between the two landslides but not the whole of the period; that's right?
A. That's right, for a short amount of time before I --

Q. When did you then become the principal building surveyor?
A. I can't recall the exact moment in time when I - that role changed. But it was some time between '22 and - I would say shortly after - some time in '23 perhaps.

Q. I see. Did Mr Glover restructure the group when he came in?
A. He did, yes.

Q. I see. And how does the group of building surveyors sit within the broader council? Are you a standalone group

or are you a team within a department?
A. The building unit is a team that sits under the planning and infrastructure directorate, I believe.

Q. I see. Is the planning and infrastructure group, is that a directorate?
A. It is.

Q. Thank you. All right. I want to start with 2022. When did you first become aware of the landslide that occurred on 15 November 2022?
A. I can't exactly remember the day. I became aware after I was advised by the MBS at the time and another colleague, senior building surveyor.

Q. Who was the MBS at the time?
A. A Mr Ashley Hansen.

Q. And who was the other senior colleague that you mentioned?
A. Mr Ben Essing.

Q. He's a building surveyor as well.
A. Yes, he is.

Q. And is he still working at the council?
A. No, he's not.

Q. Immediately after the November 2022 landslide the then MBS issued emergency orders to vacate to the occupiers of eight properties?
A. Yes.

Q. Including properties - sorry, including 10-12 View Point Road and properties around them?
A. Yes.

Q. I want to take you to the emergency order. It's RES.0010.0001.0003. This is the form for an emergency order, at least how it looked back then?
A. Yes, this was a - yes, a form of an emergency order.

Q. Has the form changed since this date?
A. We've moved away from handwritten.

Q. Okay. So this emergency order was issued on 15 November 2022. You can see that from the second page.

Do you see there "Date of inspection" and then "Date of making" at the bottom?
A. Yes.

Q. And it was issued in respect of, if we go back to the first page, unit 3 of 613 Point Nepean Road?
A. Yes.

Q. And do you know that that's the property that was occupied by the Willigenburgs?
A. Yes.

Q. Have you met the Willigenburgs?
A. I have.

Q. And you know that that property was damaged in the November 2022 landslide?
A. Yes.

Q. You're aware that the 2022 landslide occurred at about 6 am in the morning?
A. I'm not sure when it occurred. I was not a first responder in terms from my team.

Q. Mr Willigenburg's statement to this board of inquiry was that it occurred at around 6 am. And how often - sorry, not how often. How many times have you met with the Willigenburgs?
A. I'm not sure. I would say - when I say the Willigenburgs, it's been Mr Willigenburg.

Q. Thank you.
A. A handful of times.

Q. How soon after the 2022 landslide did you meet with Mr Willigenburg?
A. I can't recall. It might have been some time after.

Q. Are you aware that the 2022 landslide has been quite distressing for the Willigenburgs?
A. I do, yes.

Q. And it obviously would have been very distressing for them in the immediate aftermath of it occurring; do you accept that? That brings us back then to this emergency order. You don't need to say the name, but do you know who issued this emergency?

A. Yes.

Q. So this order is issued after a municipal building surveyor has carried out an inspection of the Willigenburgs' property?
A. Yes.

Q. And if we go back to page 2 you can see that that occurred at 10.40 am and, if Mr Willigenburg's right and the landslide occurred at 6 am, it's happening very proximate to the event; do you accept that?
A. Yes, we try to attend any sort of incident as quickly as we can.

Q. And this was issued - sorry, I thought the name had been redacted. It's only the signature. It's been issued by Mr Essing, Benjamin Essing?
A. Yes.

Q. And was he a senior building surveyor at the time?
A. From memory, yes. Yes, he was.

Q. If we go back to the first page. Can you see at paragraph 1.2 - if we just go down - this is the terms of the order? So it starts, "I, being a delegate of the municipal building surveyor under section 216B of the Act, order that" and can you see at 1.2 the order is, "Provide evidence of soil stabilisation on the land to the satisfaction of the municipal building surveyor."
A. Yes.

Q. What type of evidence is envisaged by paragraph 1.2?
A. When I spoke to Mr Willigenburg - and I'm testing my memory because it happened such a long time ago - I believe I told him that he didn't have to worry about providing evidence himself; that we were looking to engage structural engineers; and that I would then come back to him if he needed to do something more. But in terms of the question you asked, provide evidence of soil stabilisation on the land, I envisage that to be a geotechnical report.

Q. Okay. You might just need to speak up a little just to make sure that the chair can hear you; that's all?
A. Apologies. Would you like me to repeat?

CHAIRPERSON: I heard you answer, just.

MR COSTELLO: There's a bit in your answer that I want to break down a little. You started answering that question by reference to matters that you had told Mr Willigenburg. Your evidence a little earlier was that you probably didn't speak to Mr Willigenburg until some time after the landslide; is that correct?
A. Yes.

Q. All right. So at some point after the landslide you had a conversation with Mr Willigenburg about this notice; is that right?
A. I would have spoken to him about the situation and being able to return to the home to keep them updated to what the situation was.

Q. Okay. Well, I'll come back to that. Let's just concentrate now, if you like, at the point of time in which Mr Willigenburg receives this notice because, to be frank with you, the questions I'm asking at the moment are directed to trying to understand quite what it is that a person in this situation is expected to do and whether or not the process is quite fit for purpose. So a few hours after a landslide has occurred Mr Willigenburg is provided with a document that's described as an emergency order and that requires what is set out there in 1.1 and 1.2. 1.1 I didn't go to before but it says, in effect, "Don't go into the building." And 1.2 requires evidence of soil stabilisation to the satisfaction of the municipal building surveyor.

Now, it's not quite clear on the face of the document what 1.2 actually requires. And what I want to know is you as a municipal building surveyor or a delegate of the municipal building surveyor, what type of evidence would you be expecting to be provided in order for it to be to the satisfaction of the MBS as required by 1.2 here?
A. It would be in the form of a geotechnical report.

Q. You'll just need to speak up a little, I'm sorry?
A. It would be in the form of a geotechnical report.

Q. So what this notice requires in actual effect is a geotechnical report, and that geotechnical report needs to give an opinion that the soil has stabilised sufficiently?
A. I would be guessing as I didn't write the order.

Q. Well, let me ask you this question. Would it

necessarily be Mr Essing that would be responsible for assessing any information provided by Mr Willigenburg in answer to this notice or could it be somebody else within the team that would assess it?
A. It would generally lie with the person who issued the notice or order. However, it could have been assessed by somebody else. But ultimately the person who issued the order needs to be satisfied that the contents of the order have been met.

Q. On its terms it requires the information to be to the satisfaction of the MBS. But, in practical reality, would that mean Mr Essing on delegation from the MBS?
A. Yes.

Q. All right. So, accepting that you didn't write this notice, based on all of your experience at the council and working as a building surveyor you would expect that what's required here is a geotechnical engineer's report that opines that the soil has stabilised to a degree that makes it sufficiently safe for Mr Willigenburg to return; is that --
A. Yes.

Q. Now --
A. And, sorry, can I just add that would be in the context of the soil within his land. It wouldn't mean soil outside of his land.

Q. I see. Is there, so far as you understand, a standard time by which these notices need to be responded to?
A. Yes.

Q. How long is that period?
A. For an emergency order?

Q. Yes.
A. It would depend on the individual who issues the order for them to provide a timeframe, depending on the seriousness of what's been asked.

Q. And if we could just zoom out on that document, please. So where on the form there it says, "I, being a delegate, order that" can you see "by 17/11/22"?
A. Yes.

Q. "At 10.40 am"?

A. Yes.

Q. So that's 48 hours from the date on which the notice was issued?
A. Yes.

Q. All right. So just as a matter of practical reality, based on your experience as a building surveyor and your knowledge of geotechnical engineering, is there any real prospect that somebody could get a geotechnical engineering report that would meet the satisfaction of the municipal building surveyor within 48 hours of this notice?
A. No.

Q. All right. So the effect of this notice was that, until that type of evidence was provided, Mr Willigenburg wasn't to return?
A. Yes.

Q. And the practical reality was, although he was given two days in which to respond to it, it was always going to take longer than that?
A. Yes.

Q. All right. Do you accept that for somebody receiving an order like this it would not be clear to them what was actually expected of them?
A. Yes, I believe it - by looking at this now that it is a little unclear. In practice when we issue something we generally communicate with that person to explain what's required.

Q. Yes, that was my next question because I accept, Mr Flores, that this is all done necessarily in a hurried way. It's an emergency order. But I'm interested to understand if the process is fit for purpose or can be improved because this notice doesn't really - didn't really tell Mr Willigenburg much at all but it had a very, very significant impact on him and his family; do you accept that?
A. I do, yes.

Q. Save for the fact that it would no longer be handwritten, it might be typed, is this the same sort of order that would issue today if there was an emergency order; that is, are they generally in fairly broad terms and not specific?

A. We would try to be as specific as we could given the situation of what we were requesting. They would follow this format in terms of being a formal order. These are the tools that we have available to us currently under the Building Act. They are a prescribed form and we don't deviate from that.

Q. Yes.
A. Could they be kinder and gentler in language? Yes. That's where the explaining comes in, and we try to tell people that, "You'll be receiving an order. This is what it means."

Q. The explaining is important and I want to give you an opportunity to give some evidence about that, but let me just conclude with the text first. Is there any particular reason why an order like this couldn't be drafted with rather more specific language rather than, for example, 1.2 saying, "Provide evidence of soil stabilisation on the land"; it couldn't say, "Obtain a report from a geotechnical engineer as to the following matters," for example?
A. It could have said that, yes. It could have explained it a little better.

Q. Right. But is the effect of your evidence that, to the extent that sort of explanation was necessary in order to give the recipient a fighting chance of actually complying with what they were being told to comply with, that information would have come orally from the building surveyor who completed the form?
A. Yes.

Q. And you know that because that's your own practice?
A. I know that because that's my practice, yes.

Q. And is that something that you know to be the common practice of building surveyors in the employ of the council?
A. From what I've seen and observed within the office, yes. That is something that we always try to emphasise and teach any newcomers that will come in.

Q. So you don't know but you would assume that Mr Essing gave some explanation to Mr Willigenburg of what steps he should take to try and comply with this notice?
A. Yes.

MR COSTELLO: Thank you. I apologise, Madam Chair, I see the time.

CHAIRPERSON: It's fine, Mr Costello. How much longer do you have on this topic?

MR COSTELLO: I've just concluded on that particular topic.

CHAIRPERSON: Break now for lunch then, and we'll resume at 2.15.

LUNCHEON ADJOURNMENT

UPON RESUMING AT 2.15 PM:

MR COSTELLO: Continuing with Mr Flores, thank you, Madam Chair.

CHAIRPERSON: Thank you, Mr Costello.

MR COSTELLO: Thank you, Mr Flores. You'll recall that I was asking you some questions concerning an emergency notice that was dated 15 November; do you recall that?
A. Yes.

Q. 2022. Fairly shortly after that the council engaged and sought advice from Mr Slade, a geotechnical engineer at Stantec. Are you aware of that?
A. Yes.

Q. All right. I'll just show you a document. It's MSC.5003.0001.0032. I apologise, Madam Chair, I also should have said that Ms Evans has departed and Ms Peppler appears in her place.

CHAIRPERSON: Thank you.

MR COSTELLO: Sorry, it's 0030. I gave you the number of the page rather than the start of the document; apologies. Yes, thank you. Can you see the email at the top of the page there?
A. Yes.

Q. It's a little bit unclear quite what's going on. It says to Christopher Lyne, copying Derek Rotter, but it's

from Mr Slade - the "from" has just been chopped off - you can see from his signature block there. Can you see that he says, "Based on" - this is 17 November, I should say, which is evident from the top of the page, which has gone off. But, "Based on my review of the site yesterday, which identified that any current movement is limited to the cliff face upslope of 2 Penny Lane and 3/613 Point Nepean Road and does not extend significantly upslope of the crest of the cliff, it is appropriate for the occupiers of the remaining houses to return to their properties. Furthermore, we have provided individual counselling to each of the occupiers with regard to appropriate hillside practice and also signs to look for that could identify potential ground movement outside the area currently affected by the landslide." Do you see that?
A. Yes.

Q. All right. So from this point in time, which is 17 November, the council was aware that the cliff face was still moving but that movement was limited to the face upslope of 2 Penny Lane --
A. Yes.

Q. -- and Point Nepean Road, and as a consequence those two properties were still at risk of further landslide; is that how you understand that?
A. That's how I understand that.

Q. Thank you.
A. Yes.

Q. But that it was not appropriate for the occupier - sorry, and because of that it's not appropriate for the occupiers of those homes to return?
A. Yes.

Q. But other properties were not at the same level of risk?
A. Yes.

Q. Okay. We see there that Mr Slade speaks about giving individual counselling to each of the occupiers regarding appropriate hillside practice?
A. Yes.

Q. What does that mean? What is hillside practice?
A. The way that it was explained to me by Mr Slade when

I had a meeting with him was that it related to what to do in these areas - or, sorry, what not to do more so. Things like don't water your garden, look out for certain signs, things that related to the AGS guidelines.

Q. That is what Mr Slade explained to you?
A. Yes.

Q. Because I think it's right that you had a meeting with Mr Slade the next day, on 18 November?
A. Yes.

Q. Is that when he gave you that explanation?
A. Yes.

Q. Was the phrase "hillside practice" something you were familiar with before he explained it to you?
A. No.

Q. Okay. Thank you. So in effect the residents were left to implement this appropriate hillside practice?
A. I'm not sure. So what I did know is that he had a conversation with them about good hillside practice. I don't know --

Q. But that was their responsibility? I mean, it wasn't --
A. Their responsibility, yes. Yes.

Q. Thank you. And they had to, in effect, monitor for the risk of a further landslide?
A. Potentially.

Q. I ask you that because of the line that says they "could identify potential ground movement outside the area currently affected". So they were being asked to keep an eye out, in effect?
A. Keep an eye out, yes.

Q. All right. Now, as I said, you met with Mr Slade the next day. Mr Essing was at that meeting as well?
A. Yes, he was.

Q. All right. And at that meeting you did not discuss measures the shire should take to stabilise the land in the vicinity of the 2022 landslide; do you accept that?
A. Yeah, I accept that.

Q. And you did not discuss measures the shire should take to prevent or minimise the risk of a further landslide affecting 2 Penny Lane or unit 3/613 Point Nepean Road; do you accept that?
A. No, because we discussed that - I asked Mr Slade what needed to occur and, if I remember correctly, the feedback was that a geotechnical engineer would need to be engaged, there would need to be remedial works to the landslip-affected area in order to minimise any further landslip.

Q. That was in the context of whether the emergency order should remain in place, was it?
A. And also whether or not the emergency orders would remain in place. So I guess those were the two things that we - I wanted to find out from Mr Slade, is where to next, what do we need to do, and what properties remain at risk.

Q. But based on that meeting between yourself, Mr Essing and Mr Slade it was decided that the emergency orders to vacate should only remain in place for the occupants of 2 Penny Lane and unit 2/613; is that right?
A. Yes.

Q. And that orders should be issued to the owners of 10-12 View Point Road --
A. Yes.

Q. -- and I think 14-16 View Point Road that restricted their movement in some respects but allowed them to be at the property; is that your recollection?
A. My recollection is that it was decided internally that we may have to issue something on 14-16.

Q. And 10-12?
A. 10-12. And 10-12. Well, 10-12 was more so based on the advice of Mr Slade.

Q. I see.
A. From what I can recall, 14-16 was an additional measure that we were thinking of putting in place.

Q. I see. And do you recall that the effect of those orders was to restrict the owners of those properties from access within three metres of the areas that were deemed a possible risk?

A. Yes.

Q. That is a measure directed to safety questions as opposed to mitigating the risk of a further recurrence of a landslide; do you accept that?
A. That's right.

Q. And were there any discussions so far as you can recall at this meeting that was directed to the question of mitigating the risk of a further landslide occurring?
A. If I recall correctly, we did speak about a broken irrigation pipe that had been fixed. I would say that that was a measure. Asking the occupants to not irrigate unless specifically instructed on how to do so by a geotech. I would say that that was a measure.

Q. Okay. Thank you. And then following that meeting Mr Essing issued a number of notices cancelling orders to vacate?
A. Yes.

Q. Including the notices that had been issued to the owners of 10-12 View Point Road?
A. In relation to their house, yes.

Q. Yes. Thank you. I might just show you the notice. It's MSC.5007.0003.0515. And this brings out some of the matters that you've just been speaking to, I think, Mr Flores. So this is a notice that cancels a previous emergency order; is that correct?
A. That's right, yes.

Q. All right. Now, there are still some direction given there, that "the owner/occupier must ensure the following conditions are adhered to", and they're the types of matters that you had discussed with Mr Slade, are they?
A. Yes, they are.

Q. Thank you. Can you see number 3, which is impeded a little bit by the footer that's somehow come up. Can you see there, "The owner/occupier must follow hillside practices"?
A. Yes.

Q. The meaning of that term would have been more obvious to the recipient because of the prior conversation Mr Slade had had with them; is that fair?

A. Yes.

Q. Yes. Thank you. What about the phrase "changing site conditions", which is also within 3? Is that a concept that would have been explained?
A. It would have been explained by Mr Slade.

Q. You know that, or are you assuming?
A. I am assuming.

Q. And the owners had to engage their own suitably qualified geotechnical engineer; that's required by 1?
A. Yes.

Q. Did the shire give any assistance to residents in locating, identifying suitably qualified geotechnical engineers?
A. I can't recall.

Q. Do you think that it would be apparent necessarily what "suitably qualified" means in this context?
A. I'm not sure.

Q. Okay. In fairness, the recipient of this notice was - one of the recipients of this notice was Mr Borghesi, who's a trained engineer?
A. Yes.

Q. It may have been more readily apparent to him. But a notice in these terms issued to somebody else do you accept it might not be quite clear to them what a "suitably qualified geotechnical engineer" means?
A. I accept that, and we tried to - we do relay to people that if they have any questions about anything that they are to call us.

Q. Thank you. The cost burden of all of this, engaging a geotechnical engineer and complying with the work, that all just falls to the landowner, does it?
A. It does, yes.

Q. There's no scheme that you're aware of that can provide financial assistance to people?
A. Not that I'm aware of, no.

Q. No practice that you're aware of of council, for example, engaging a geotechnical engineer on behalf of

residents?
A. Not that I'm aware of, no.

Q. Now --
A. Sorry, Mr Costello, can I add to your previous - that was until the 2025 landslide, where council engaged PSM. So, when you say if I was aware of anything, not at the time of the 22 landslide. However, following the 2025 landslide Dane Pope of PSM had been engaged for some time and continued to be engaged.

Q. Yes. That's true. But you wouldn't characterise Mr Pope as being engaged on behalf of the landowners, would you?
A. No. He was engaged on behalf of council, as I understand.

Q. Also on 18 November you issued an emergency order to the Borghesis; do you recall that?
A. I've issued several pieces of enforcement. If you could please bring it up?

Q. Yes, I'll bring it up for you. It's MSC.5007.0003.0858. This is I think the one that I mentioned to you earlier about the three-metre limit. So just have a look at that order. Again, I'm not quite sure --
A. Could we go to the next page, please?

Q. Yes, of course.
A. Yes.

Q. Yes, and you can see that there's the reference I was giving you to within three metres of the embankment and beyond?
A. Yes.

Q. So you issued this order?
A. That's right.

Q. And then on 28 November you issued a further order to the Borghesis; do you recall that?
A. Could I please see a copy of that?

Q. Yes. MSC.5007.0003.0804.
A. Could we please go to page 2? Yes.

Q. Do you recall that you issued that?
A. I do, yes.

Q. It orders the Borghesis to engage "a suitably qualified geotechnical engineer to undertake an assessment of the property and provide a report containing recommendations and work methodology for the undertaking of 'make safe' work to stabilise the land that's been impacted by landslip"?
A. Yes.

Q. Do you see that? And it required a copy of that report to be provided to the municipal building surveyor by 5 pm on 5 December?
A. Yes.

Q. That's within a week of this order --
A. Yes.

Q. -- being issued? And I think it's right to say that that report and its recommendations were then to be peer reviewed; you can see that at 1.2?
A. Yes.

Q. By the council. Is a week a realistic timeframe for a report of that nature?
A. I had previously been speaking to Mr Borghesi before we issued this. We were waiting on the report from - I was waiting on the report from Mr Davin Slade to come through - if my memory's correct, it came through to me shortly before issuing this - to see if there was any other information in there that I could use to inform on how to - what to ask in the order. So, going back to your point about is that a reasonable timeframe, I was speaking to Mr Borghesi, saying that "you would need to engage a geotechnical engineer" prior to this.

Q. Do you mean before you formally issued this?
A. Before I formally issued this, yes.

Q. So he had some notice?
A. He had some notice, yes.

Q. And this notice also required the Borghesis to engage a suitably qualified and insured professional to undertake "make safe" work to stabilise the land that's been impacted by the landslip?

A. Yes.

Q. And that work then needed to be approved by the MBS, which probably means by you, in effect?
A. Yes.

Q. And it was to be completed by 19 December?
A. Yes.

Q. Okay. And, once again, as with the engagement of the geotechnical engineer, the cost of all of that work, that falls to the landowner under the current system?
A. It does, yes.

Q. Thank you. Do you know if in this period, that is November/December 2022, whether the shire was actively considering steps it should take to stabilise the land at 10-12 View Point Road?
A. I'm not sure.

Q. You don't know?
A. I don't know.

Q. If there was consideration of whether the council could or should take steps to stabilise the land, are they considerations that you would expect the municipal building surveyor or his staff to be aware of?
A. Yes, if there was something that impacted an order that we had issued, I would expect that that information would be relayed back to the office of the MBS.

Q. Would it be likely that your or the MBS advice would be sought about something like that, or would they deal - would someone else in the council likely deal directly with an engineer?
A. I don't know. I haven't been involved in a situation like that before, so I don't know. All the orders that we issue relating to various pieces of work that need to do are all directed at the owner and request the owner to do work.

Q. Mr Slade of Stantec provided a geotechnical report to the shire on 7 December 2022. Do you have a recollection of a report being provided?
A. I do, but if you could please bring it up.

Q. I'll bring it up. It's MSC.5000.0001.0292. Have you

seen this before?
A. I have, yes.

Q. It's addressed to Mr Rotter and Mr Lyne at the council; can you see that?
A. Yes.

Q. And Mr Rotter's, in particular, name is through quite a number of the documents, including some of those that you have exhibited. What was his role at the relevant time?
A. I'm not sure what his official role was at the council at that time. I just knew that Derek worked in - somewhere in infrastructure.

Q. Right. So he wasn't within the building surveyors group?
A. No.

Q. No. Is he somebody that you had worked with before?
A. In a limited capacity I would say.

Q. I see. I'm just trying to understand who it was that sort of had the most direct contact with Mr Slade and Stantec in connection with the work that they were doing. You've clearly had discussions with Mr Slade, but was it Mr Rotter that was responsible for engaging him?
A. I'm not sure. I didn't engage him. I wasn't --

Q. It wasn't you that --
A. -- part of the engagement, so --

Q. Okay. Thank you. You understood from this report that the probable cause of the landslide was significant rainfall event?
A. Yes, together I believe in the report it may mention something about a broken irrigation pipe.

Q. Quite right. "A failed irrigation pipe" is I think the language of the report?
A. M'hmm.

Q. Those two factors were pointed to as being the probable causes?
A. Yes, in the opinion of the writer.

Q. At least from that point you knew that excess water in the escarpment was capable of triggering a landslide; is

that fair?
A. At that point, yes.

Q. Is that a matter you were aware of before reading that report?
A. No.

Q. Okay. And that brings me to questions about MBS training or building surveyor training. In the course of your training, either formally or your work at the council, do you do any modules or any training concerning landslide risk and the relevance of that to the work of surveying?
A. Sorry, I'm trying to remember my schooling, which is a while ago. No, I don't recall that being a particular topic that was covered in terms of the study that I did. When I then think about working in the field as a private building surveyor, because that's where I started --

Q. Yes.
A. -- which mainly deals with the issuing of building permits, that's where I was trained to consider geotechnical reports.

Q. Yes.
A. And then to look out for what they said and make sure that the structural design referenced the appropriate geotechnical report. But that is really the extent of it.

Q. So if you were assessing a permit application in an area that was on a slope --
A. Yes.

Q. -- as part of your ordinary consideration of the application would you take into account landslide risk?
A. Only if it had been flagged.

Q. I see. And it would be flagged, for example, by the provision of a geotechnical report?
A. More so the provision probably from a planning perspective. There would be conditions in a planning permit that we would look out for when issuing - when reviewing the building permit application.

Q. Have you been involved in applications for areas that are covered by an EMO?
A. I can't recall. I've been at the council for 10 years. Prior to that I was working in the city dealing

with commercial buildings.

Q. I see.
A. So --

Q. Less likely there, I suspect?
A. Less likely. Landslip areas, from my understanding, are generally more outside of metro Melbourne, with the exception of Mornington Peninsula.

Q. Are you aware that in some circumstances where it - you know what I mean by an EMO?
A. An emergency management --

Q. An erosion management overlay?
A. Erosion management overlay, sorry.

Q. Are you aware of that?
A. Yes.

Q. Are you aware that sometimes where an erosion management overlay applies it's necessary for the applicant to get a geotechnical report and to submit the report to council as part of the process? Is that something you know?
A. It's something that I've become familiar with since dealing with the 22 landslide.

Q. Only since?
A. Only since, yes.

Q. I see. Thank you. Your evidence is that between December 2022 and August 2023 you communicated with the Borghesis regarding proposed stabilisation works?
A. I haven't got a copy of my statement in front of me but, yes, that sounds right.

Q. You can recall generally the --
A. Yes. Yes, there were several conversations, lots of correspondence between myself and Mr Borghesi.

Q. And Mr Borghesi was putting forward reports from another geotechnical engineer?
A. That's right, CivilTest.

Q. And you asked Stantec to peer review or at least examine --

A. To peer review, yes, that's right.

Q. So at this point in time the Borghesis were taking the lead in trying to find a solution to stabilise the hill; is that a fair characterisation?
A. Yes, Mr Borghesi was very - very willing and engaging with myself and wanted to rectify the solution - rectify the issue. He wanted to fix - fix the land that had failed so that the people downslope could return to their homes.

Q. Thank you. On 17 February 2023 you received an email from Ben and Anna Wells. They were then the occupants of 3 Penny Lane, and the email concerned drainage problems on View Point Road and Penny Lane. I'll show you the email in a moment, but do you recall receiving an email from Ben and Anna Wells as you sit there now?
A. Vaguely.

Q. Fair enough. Could I please go to MSC.5003.0001.7170. I said "you" but, in fairness to you, you can see there it's addressed both to you and to Mr Essing?
A. I'm sorry, I can't recall --

Q. You don't recall receiving this email?
A. -- receiving this email.

Q. No, that's all right. That's fine. Can you see there in - I don't want to read the whole thing, but can you just read the first paragraph to yourself where he says, "My wife and I are concerned"?
A. You would like me to read it?

Q. Just read it to yourself.
A. Okay.

Q. Then can you see towards the end of the email there's a sentence - a paragraph, rather, that starts, "Hopefully works will start," right there where the red dot is?
A. Yes.

Q. Thank you. "Hopefully works will start on the spill in the near future." Mr Wells refers to the landslide throughout this email as a land spill or a spill, and he says that, "Hopefully works will start on the spill in the near future." As you sit there now, do you know what works he's talking about there?
A. No, I don't know if that refers to works to the

landslip-affected area of 10-12 View Point Road or --

Q. Can you see that further on in the sentence he says, "But in the meantime whilst the plan is being critiqued"?
A. Yes.

Q. Do you think there he's speaking of perhaps a proposal that Mr Borghesi has made that you've asked Stantec to peer review?
A. Yes, possibly.

Q. Is there anything else that you can think of that he might be referring to? I'm not sure that is what he is referring to. I'm interested in what you think.
A. All I can think of is the works that Mr Borghesi was proposing to do.

Q. I see. He then says, "Would it be possible for the shire to review the drainage system and make any necessary improvements, thus ensuring that the drainage infrastructure is ready and up for job when the works begin, this would give us some reassurance that another major downfall isn't going to result in another spill." Do you see that?
A. Yes.

Q. So they're here concerned that further rain might put their property at risk; is that what you understand that to be?
A. I'm not sure. I'm not - because I don't recall ever receiving this email, I'm - yes, I don't want to speculate to what it means sitting here.

Q. But the natural meaning of "this would give us some reassurance that another major downfall isn't going to result in another spill" would seem to be a concern that another rainfall event might cause a further landslide; do you accept that?
A. Yes, but I'm not sure what area they're referring to.

Q. Yes, although it's likely they're concerned with the area that affects them, which is 3 Penny Lane; do you think that --
A. That's a fair assumption.

Q. Do you know if the shire reviewed the drainage system, as was requested by the Wells?

A. I'm not sure. I don't know.

Q. Do you know if the shire considered whether the repair of the drainage system was an important step to preventing or minimising the risk of further landslide in the vicinity of 10-12 View Point Road?
A. I don't know.

Q. And, just to be clear about this, you don't have any recollection of receiving this email?
A. I don't, no.

Q. And do you also have no recollection of whether or not you took any action in connection with the request to review and make any necessary improvements of the drainage system?
A. I recall receiving some emails. I can't recall who sent the email to me raising concerns about the drainage. Certainly Mr Borghesi raised that with me, and I then forwarded it on to other people within the shire.

Q. Yes, I was about to say because you wouldn't be the person who had responsibility for the review of a drainage system, would you?
A. No. No, that's outside --

Q. So it's likely that to the extent you were going to respond to this you would have responded to it by sending it on to somebody else; is that fair?
A. That's right, and then writing back to the customer to say, "I've forwarded your email to such and such department."

Q. And you know and have given evidence to the effect that in May 2023 the shire did undertake drainage works on View Point Road?
A. Yes.

Q. And do you have any recollection of the history that went into those works; that is, do you know if they were scheduled at the time?
A. No, I don't know. I found out - I think Mr Borghesi told me that there was works happening. I had --

Q. I see.
A. I had no idea.

Q. Thank you. Do you recall that Mr Borghesi sent you an email in May 2023? You have referred to it in your statement, and I'll bring it up for you. It's MSC.5005.001.4483. This might be what you're referring to when you say Mr Borghesi told you. It might be this email. It's MSC.5005.0011.4483. Do you see there, the bottom of the page, it's from Mr Borghesi to you? The date's cut off, but it's 11 May 2023?
A. Yes.

Q. "The council drainage excavation work in View Point Road has uncovered a large void under the kerb and a channel that has been directing a continuous flow of water down View Point Road to the cliff face seeps, which is exactly where the landslip occurred. These seeps were a contributing factor to the landslip. Refer to the geotechnical reports. It is now clear the cracked kerb and channel coupled with the continuous flow of water has been a key contributor to the landslip of November 2022"; do you see that?
A. Yes.

Q. And you recall receiving this email?
A. I do, yes.

Q. Okay. And you've referred to it in your witness statement, and you've responded promptly or within a week to Mr Borghesi informing him that you have forwarded it to the council's infrastructure and engineering departments. And do you recall who you forwarded it to?
A. Sorry, I can't recall.

Q. You didn't have any particular responsibility for investigation into the cause of the landslide, did you?
A. No.

Q. All right. So this was an email that, though directed to you, was not really within your area of responsibility?
A. No. I guess I was Mr Borghesi's main point of contact at the council because I had been dealing with him on such a frequent basis.

Q. Did you understand that the identification of a large void could be particularly significant?
A. I didn't know. I'm not a geotechnical engineer, so I don't know how something like that would affect. I didn't know where it was from this email.

Q. Do you recall whether you received any further information from the infrastructure and engineering department after you forwarded this to them?
A. I can't recall. Sorry, I can't recall.

Q. At paragraph 24(b) of your statement you say that Mr Borghesi's email was considered within the shire; do you recall saying that?
A. Yes.

Q. Who considered it?
A. I can't recall who considered it.

Q. Do you know that it was considered or are you assuming that it would have been considered because you forwarded it to somebody?
A. I received an email at some point in time after enquiring about the responsibility of who is to fix for it, and I was advised that the responsibility lies on Mr Borghesi, so - yes, so I guess that informed me that it was --

Q. Let me make sure that I understand that. You have a recollection that somebody within the council at some point advised you by email about --
A. Not about the kerb and channel.

Q. I see.
A. I guess what I'm trying to say is in this email it mentions the responsibility lies with council, so, yes, that's what I enquired about.

Q. Right.
A. To know, "Where are we going from here? Am I continuing to down the notice and order path, requesting that action be taken by Mr Borghesi, or is there some other type of solution here?"

Q. Do you know whether somebody within the council considered the relevance of what Mr Borghesi described as the large void under the kerb and the channel that's been directing a continuous flow of water to the cliff face, or is that just something you're not aware of?
A. In my statement I write that the report from PSM --

Q. Yes.

A. -- that was submitted, so that may help me in answering the question.

Q. Thank you. So that was my next question, is whether here there's any differentiation between the council and Mr Pope, because Mr Pope certainly did consider these voids. Are you referring to Mr Pope when you say the council considered them, or are you referring to somebody else within the council?
A. I'm referring to Mr Pope.

Q. Okay.
A. Yes.

Q. Thank you.
A. I guess relying on an expert such as Mr Pope.

Q. I see. Do you recall that Mr Pope's report is dated 11 June 2024?
A. If you could bring up the report, please?

Q. I can. It's MSC.5000.0001.0639. Would you like me to show you some further pages of that report?
A. Yes.

Q. All right.
A. If it's the report I'm thinking of, could you please go to page 27, I believe?

Q. Very impressive. Is that the page you're --
A. Yes, that's the report I'm thinking about. Yes, I wasn't given a copy of this report. It's only in the preparation of my witness statement that I had been shown a copy of this.

Q. You anticipated my question. Thank you. So you only saw this in preparing your witness statement?
A. That's right, yes.

Q. And you're not aware, are you, of any other consideration being given by somebody within the council to the matters raised in Mr Borghesi's email to you?
A. I don't - I don't know.

Q. And you know that this report is more than 12 months after Mr Borghesi's email to you?
A. Yes.

Q. Thank you. I think the next document in the sequence is MSC.5002.0001.0898. This is a notice that you issued to the Borghesis requiring them to show cause. If we could go to 0900, please. Can you see there at the top of the page "show cause why you should not be required to carry out the work identified in this notice in relation to the land, namely"?
A. Yes.

Q. And there the work is set out as "undertaking stabilisation work"?
A. Yes.

Q. This is a bit like the other notices, isn't it? Quite what the stabilisation work isn't identified in the notice?
A. Sorry, could you repeat that?

Q. The stabilisation work that's required by the notice isn't identified in the notice itself?
A. It's not. We had issued - I had issued an emergency order and a building order for minor work prior to issuing this notice. I guess the scope of what was proposed had changed over time. It started off as Mr Borghesi proposing to put retaining walls in up the slope, and that was, I guess, the first proposal that I saw. Different ideas were floated around or discussed. So the purposes of not really - the purpose of keeping it broad was to allow some flexibility in the design.

Q. And, in fairness to you, you were in fairly regular contact with Mr Borghesi in this period?
A. I was, yes, up until a certain point around the time of the Building Appeals Board hearing, where the matters were - I guess I took a step back because they were being handled by our legal representatives.

Q. This is the point where - this is when it got to the point that Mr Borghesi commenced a proceeding in the Building Appeals Board challenging the validity of a notice you had issued him?
A. Yes.

Q. Could I have MSC.5002.0001.1567, please. This is the 4 April building order that you issued?
A. Yes.

Q. By this order you ordered the Borghesis to carry out stabilisation work to the landslip-affected land in accordance with geotechnical recommendations that are structurally engineered designed after obtaining relevant building approvals; do you recall that?
A. I do. Could I please see page 2 to this?

Q. Yes.
A. Thank you.

Q. Is that the page you're after?
A. Yes.

Q. This was due by 3 June 2024?
A. Yes.

Q. And you were aware that non-compliance with an order of this type carries serious consequences?
A. Yes.

Q. Including a very significant fine?
A. Yes.

Q. And, given that, it's important, isn't it, that what is required by these orders is very clear?
A. I accept that, yes.

Q. Is that something that you have in mind when you're drafting an order like this?
A. Generally, yes. It depends what it's for. A lot of the work that we do is - relates to illegal building works. That's predominantly what our enforcement is for. In this particular case I would say that, as I was saying before, I didn't want - at the time I didn't want to make it too restrictive on the things that they needed to do. I didn't want to mirror what I had put in the emergency order because - in here I've asked for planning approvals to be submitted, and as part of the planning approval process the design would be peer reviewed, there would be conditions, and by "review" I mean reviewed by council's development engineering team, who are engineers, structural engineers, which have a better understanding of design.

Q. At the time you issued this notice it's right, isn't it, that the shire didn't yet have an opinion from Mr Pope as to the definitive cause of the November 2022 landslide?
A. I was not aware of that, no.

Q. I see. And, given that this order is in effect requiring the Borghesis to undertake what presumably are quite expensive works, did you need to be aware of whether or not they had caused - they had been responsible for the landslide in any way, or is that not a relevant consideration to you in this process?
A. I would say that I did make enquiries as to the responsibility and the costs, specifically around who pays for it, and I was advised that the shire holds Mr Borghesi - or the Borghesis responsible for the work. Also, a notice and an order can be appealed at any time within a timeframe. So there is that appeal option there. If somebody does not agree with the notice or an order that's been issued by council, they can appeal it, and that's what happened in --

Q. That in fact happened here?
A. That in fact happened, yes. However, I - yes, I - they challenged it on an issue that I didn't think was going to be challenged at the time of writing this.

Q. I see. But it was challenged, and the result of the challenge was that the Building Appeals Board found the notice to be invalid?
A. Yes.

Q. I just want to ask you - I see the time, Madam Chair. I've probably only got three minutes of questioning left. Thank you. I just want to ask you a couple of questions about the period before the 2025 landslide?
A. Yes.

Q. At paragraph 30 of your statement you say that at no stage between the November 2022 landslide and the first 2025 landslide were you aware that there was a risk of a further landslide occurring at the specific location on 10-12 View Point Road or of the magnitude of the McCrae landslide?
A. Yes.

Q. Do you recall saying that? Is the reason for that because the shire didn't commission or undertake any risk assessments to determine the likelihood and severity of a landslide in that area?
A. Going back to the Stantec report, that's what I relied on, and the conclusions of that report were that the risk

was upslope of 2 and unit 3/613 Point Nepean Road. So in my opinion it was after reviewing that information it was confined to that area.

Q. And I want to be fair to you, Mr Flores, you weren't necessarily given reports from Mr Pope at the time; is that right?
A. It - you'd need to show me the report for me to see. An example of that would be the one that we just spoke about and --

Q. That you had seen for the purpose of preparing a witness statement --
A. That I'd seen for - yes.

Q. All right. Mr David Simon in evidence that has gone to this inquiry said that, to the best of his knowledge and understanding, in the period that he's been with the shire the shire has not undertaken any risk assessments to determine the likelihood and severity of landslides and landslips in the McCrae area. That was Mr Simon's evidence.
A. Okay.

Q. Putting aside the Stantec report that we just talked about then, are you aware of any reports of that nature?
A. No. No.

Q. And then on 7 January, that's two days after the 2025 landslide, you undertook an inspection at the landslide site; is that right?
A. Yes, on the 7th I attended site with a colleague; yes.

Q. Who was that colleague?
A. Mr Jimmy - James Jones.

Q. Is he also a surveyor?
A. He's an inspector.

Q. Thank you. An inspector being a more junior level of building surveyor; is that right?
A. I don't think Jimmy would like the word "junior", but yes. A different type of qualification.

Q. I see. Thank you. And when you undertook that site visit you observed water flowing out of the escarpment?
A. Yes.

Q. And you could see that the amount of water had possibly increased at the base; do you recall making that observation?
A. On the 7th? That was my first time visiting the site.

Q. I see. When you saw that there was water flowing out of the escarpment was that a cause of concern for you?
A. Yes, I mean more so the amount of debris that had impacted the house. That was quite confronting and --

Q. The amount of debris was confronting?
A. Yes.

Q. Yes. But, sticking with the water at the moment, when you saw that water was it any part of your responsibility, for example, to consider whether or not diversions should be in place to try and divert that water, or is that just outside of your area of responsibility?
A. It's not something I considered. I would generally seek to obtain the advice of someone who's suitably qualified, like a geotechnical engineer, to advise on those matters.

Q. Do you remember taking that up with anybody?
A. I didn't, no, because the investigation was being led by the MBS, Matt Glover at the time. So I had limited involvement. Just to give you a little bit of context, I was on site because my colleague, Jimmy Jones, said he was going out on site to do an inspection. I said, "I'll come with you because I don't want you to go by yourself" --

Q. I see. That was the reason that you were --
A. That was the reason I was there, yes.

Q. I see. Did anyone ever raise with you the concept of inserting spear pumps to divert water? Is that something you're familiar with?
A. Mr Borghesi may have raised that at some point in time.

Q. And if Mr Borghesi raised that with you is that a matter that you would have passed on to somebody else, or would that be something within your own area of responsibility?
A. I would have passed it on possibly to Mr Glover. I'd

have to check my emails because it was during January, I was on leave, kids' holidays, so there's - there may have been a text or something like that from Mr Borghesi. I'm not too sure.

Q. I see.
A. Which I didn't find until after the second slip in January.

Q. Thank you. Mr Flores, just finally, I didn't ask you to sign your witness statement when you first got into the witness box. You've actually provided a signed copy already. Do you have a recollection of signing this?
A. Yes.

Q. You signed it on 22 May 2025?
A. Yes.

Q. And as you sit there today is the information that you've set out in this witness statement still true and correct?
A. Yes.

Q. All right. Well, I'll tender that witness statement and the exhibits thereto, thank you, Madam Chair.

CHAIRPERSON: (Inaudible).

MR COSTELLO: Thank you. Madam Chair, I have no further questions for Mr Flores.

CHAIRPERSON: Thank you. Mr Flores, I think you said prior to issuing this building order that's on the screen in front of you --
A. Yes.

CHAIRPERSON: -- that you asked someone whether it was Mr Borghesi's responsibility to undertake stabilisation works?
A. Yes.

CHAIRPERSON: Is that what you said?
A. Yes.

CHAIRPERSON: Yes. Who did you ask?
A. It was I think somebody within the legal department. I believe - I can't remember the person's name.

CHAIRPERSON: Within the council's legal department?
A. Yes.

CHAIRPERSON: So you contacted the council's legal department to get advice --
A. Yes.

CHAIRPERSON: -- prior to issuing the building order?
A. Yes, to see if the position had changed or --

CHAIRPERSON: Thank you. Do you have any questions?

MS FOLEY: Chair, I have a small number of questions that I run past my learned friend.

CHAIRPERSON: Yes.

<EXAMINED BY MS FOLEY:

MS FOLEY: Mr Flores, you were asked some questions by Mr Costello about emergency orders that you had issued?
A. Yes.

Q. And you were asked some questions about the timeframes for compliance in those emergency orders?
A. Yes.

Q. Do you recall those questions?
A. I do, yes.

Q. And you were asked some questions about whether those timeframes were reasonable?
A. Yes.

Q. How do you decide on the timeframes that need to be included in those emergency orders?
A. Generally training - through experience I've been advised that if I was to issue an emergency order you - that I should try and limit the amount of time that I put on the order, whether it's seven days, 14 days; anything further from that may be considered issuing some other type of enforcement.

Q. And is it simply a matter that you understand is within your discretion or are there prescriptions or other guidelines that you follow in making your decisions?

A. I don't know if there's guidelines on these things. It's something that I guess I've learned over time.

Q. The approach that you followed in relation to these emergency orders, is that consistent with the approach you ordinarily follow?
A. Yes, in terms of timing, yes.

MS FOLEY: No further questions.

CHAIRPERSON: Any other questions?

MR COSTELLO: Madam Chair, there is one document that I took Mr Flores to that wasn't in his witness statement and I should tender. It's MSC.5003.0001.7170. If this could be brought up. It's the email from Mr Wells to Mr Essing and Mr Flores dated 17 February 2023. If I could tender that, please.

CHAIRPERSON: That email will be exhibit CA33.

EXHIBIT #CA33 EMAIL FROM MR WELLS TO MR ESSING AND MR FLORES DATED 17 FEBRUARY 2023

MR COSTELLO: Thank you, Madam Chair.

CHAIRPERSON: Mr Flores, your evidence is now complete. Thank you for coming to assist the inquiry.
A. Thank you.

<THE WITNESS WITHDREW

MR COSTELLO: Madam Chair, it may be famous last words, but the last witness will be quick. Would you like to take the afternoon break now?

CHAIRPERSON: Let's do it now, and we'll resume at 3.30.

MR COSTELLO: Thank you.

CHAIRPERSON: Thank you.

SHORT ADJOURNMENT

CHAIRPERSON: Mr Costello.

MR COSTELLO: Thank you, Madam Chair. The next witness is

Ms Barlow. Before I call her, there's just one matter that my learned friend Ms Foley would seek to address.

CHAIRPERSON: Yes.

MS FOLEY: Chair, Ms Barlow's statement in paragraphs 25 to 29 address some matters in relation to which the State has raised a question about the application of parliamentary privilege. In order to avoid an objections process and in order to avoid you as chair needing to rule on those complex matters, the shire has decided not to press paragraphs 25 to 29 of Ms Barlow's statement, and I understand my learned friend Mr Costello will deal with that when Ms Barlow is in the witness box. And I should have mentioned earlier today that for Ms Barlow's evidence I have Mr Viney appearing with me, and for Mr Flores' evidence I had Ms Bateman appearing with me.

CHAIRPERSON: Mr Costello, I assume that you're content with those paragraphs not being read?

MR COSTELLO: Yes, I am, thank you, Madam Chair. We discussed it over the lunch break, and I'll deal with it now. If I could call Ms Barlow, please.

<KATANYA BARLOW, affirmed:

<EXAMINED BY MR COSTELLO:

MR COSTELLO: Ms Barlow, could state your full name, please?
A. Katanya Barlow.

Q. And your current occupation?
A. Is manager of strategic and infrastructure planning.

Q. And your business address?
A. Is 90 Besgrove Street in Rosebud.

Q. Okay. Ms Barlow, this will be quite quick. You said you're the manager, strategic and infrastructure planning; is that right?
A. That's right.

Q. And where within the directorate structure of the council does that sit?
A. In planning and environment directorate.

Q. And who's in charge of that directorate?
A. David Simon.

Q. Thank you. Now, Ms Barlow, you've given evidence about two matters. Do you have a copy of your witness statement there?
A. No.

Q. I'll have it handed to you. You've made a witness statement dated 6 June 2025 that you've got in front of you there?
A. Yes.

Q. You've heard what Ms Foley has just said about certain paragraphs in that witness statement. Do you have a pen with you?
A. I do.

Q. Could I ask, first, that you go to page 8, paragraph 25?
A. Yes.

Q. Could I ask that you draw a line through paragraph 25 --
A. M'hmm.

Q. -- 26, 27, 28 and 29. If I just ask you to sign on the side of each page where you've drawn a line?
A. M'hmm.

Q. The effect of that line, Ms Barlow, is you're not giving the evidence that you've set out there. Save for those paragraphs, is the evidence set out in that witness statement true and correct?
A. Yes.

Q. All right. Could I ask you then to sign and date it on the final page, page 22. Thank you. And, Madam Chair, I tender that witness statement and the exhibits thereto save for the document referred to in paragraph 25.

CHAIRPERSON: The statement of Katanya Barlow with paragraphs 25 through to 29 deleted and without exhibit --

MR COSTELLO: It doesn't have a number. It's MSC.5057.0001.0361.

CHAIRPERSON: And without that document included, is exhibit CA34.

EXHIBIT #CA34 STATEMENT OF KATANYA BARLOW WITH PARAGRAPHS 25 THROUGH TO 29 DELETED AND WITHOUT THE EXHIBIT REFERRED TO IN PARAGRAPH 25, MSC.5057.0001.0361.

MR COSTELLO: And, Madam Chair, I've explained to the solicitors assisting that those paragraphs will need to be redacted from the document that is made public and the exhibit excised. So that might just take a little while to occur.

Ms Barlow, you've given evidence on two principal topics. The first is really an elaboration on some evidence originally given by Mr Oz in his witness statement that deals with in large part statewide provisions and bushfire planning controls, and that evidence has been very useful and is being considered in the course of the writing of the report. I don't intend to ask you any questions about that today.

I want to focus instead on what was question 4 to the notice that you responded to, which concerns the process for the introduction of an interim erosion management overlay. Before we get to the substance of that, can I just situate erosion management overlays within your work. Do you have any particular responsibility for erosion management overlays in your role, or is it just an aspect of the work of the planning department that is dealt with in the course of ordinary work by everybody in that department?

A. So the strategic planning team is within my remit, and they undertake planning scheme amendments. So they would be responsible for the planning scheme amendment to introduce a new erosion management overlay.

Q. I see. And they would equally be responsible for a planning scheme amendment for any other overlay?

A. Yes.

Q. I see. Thank you. Before we get to the idea of an interim EMO can I just understand there's a large number of overlays available within the planning system. Is an erosion management overlay at the more complex end of overlays in terms of what's required in order to put one on

or is it a fairly standard --
A. I wouldn't say it's fairly standard. It requires the same strategic evidence base that any other overlay would require.

Q. I see. Are the timelines that are involved in having an erosion management overlay - I'm not talking about an interim one now but a final one - imposed, are they similar sorts of timeframes for other overlays?
A. Depending on what the overlay is. So, for example, if you had an overlay that wasn't particularly controversial it could happen more quickly, whereas if you had something which is of high interest to the public and there's many submissions, that could take longer.

Q. I see. So part of the timeframe involved in imposing an overlay is community consultation and the requirement to give procedural fairness to people by properly considering their submissions; is that right?
A. Yes. Correct.

Q. I see. Thank you. Now, somebody uneducated in the Victorian planning system might have thought that the application of an interim or emergency erosion management overlay in circumstances that obtain in McCrae, for example, where there have been two landslides in relatively close proximity, would be something that could be done expeditiously, but it's made quite clear from your evidence that that's not correct; do you accept that?
A. I do accept that.

Q. All right. I'm going to ask you to explain the process to the chair, but let me guide you through it a little. In terms of the application of an interim EMO there are, you've explained, two paths by which an interim EMO can be imposed; that's correct?
A. That's correct.

Q. And the two paths depend upon who is the relevant planning authority?
A. Correct.

Q. And there's two possibilities in that regard. The first is the shire is the planning authority; is that correct?
A. Correct.

Q. And the second is that the minister is the planning authority?
A. Correct.

Q. And what determines whether the shire's the planning authority or the minister's the planning authority?
A. It's fundamentally up to the Minister for Planning.

Q. I see. So the minister can elect to be the authority?
A. She can.

Q. And she can also elect not to be the authority?
A. She can.

Q. Which would require the council to be the authority?
A. She can.

Q. I see. So a necessary first step in the process is determining who the authority is; is that right?
A. Yes.

Q. I see. And so how's that done in a practical sense?
A. So normally the planning authority would be the council for most normal amendments. But, if there was an amendment where council would like the minister to be the planning authority, the council would request the minister to be the planning authority.

Q. I see. And is that something that is done from time to time by the council, your council?
A. Occasionally, yes.

Q. Has that ever been done in connection with an EMO?
A. Not that I'm aware of.

Q. All right. Now, I want to go through the process on the two pathways, but in general terms to set the scene in the sense of timing do you consider that one pathway's quicker than the other?
A. If the Minister for Planning is the planning authority, particularly if she chooses to do it under what's called 20 part 4, where she chooses to not do the public exhibition part of the process, then that's much quicker.

Q. All right. And so we'll come to the detail of this, but the reason it's quicker is that if the minister's the

planning authority the minister has the ability to exempt herself from parts of the process that the council would otherwise be required to engage in; is that the general sense of it?
A. That's correct.

Q. But at the other end of the spectrum is that it would be for the minister to ultimately make a determination and there are no relevant timeframes that would constrain the minister? That is the minister could take as long as she likes in determining whether or not to make the interim EMO; is that right?
A. That's correct.

Q. I see. So it's open-ended as to time, but if the minister was minded to do it quickly the minister could do it more quickly?
A. Yes.

Q. And here more quickly means what? More quickly than how the council could do it?
A. Correct.

Q. And what's the fastest time - the fastest realistic time that the council, if it was the planning authority, could impose an interim emergency management overlay?
A. I'd say based on experience 18 months to two years.

Q. I see. And the 18 months to two years, is that assuming relevant mapping's already been done, or does that include doing the mapping?
A. No, that's assuming the relevant mapping's already been done.

Q. If the relevant mapping's not already been done, what sort of timeline are we looking at?
A. To update the mapping, that's around a two-year process, and then another 18 months to two years minimum for the planning scheme amendment.

Q. And the updated mapping's also required on the second pathway, if the minister is the planning authority; is that right?
A. It is, to note, though, for the interim overlay we would be looking to use existing 2012 Cardno mapping, for the interim overlay, not for the permanent overlay.

Q. I see. So taking a step towards the real world rather than dealing with it in a hypothetical level, if there was to be an interim EMO applied here in respect of the McCrae area that could be done based on the current mapping?
A. The 2012 Cardno mapping, yes.

Q. I see. And so then the real timeframe is 18 months or more if the council does the process?
A. Correct.

Q. Is that right? And are you able to estimate in terms of the minister?
A. It's ultimately up to the minister. We'd anticipate four to six months, but that is just a guess.

Q. Four to six months would be the quickest it could be, and it could be longer than that; is that fair?
A. It is an absolute guess because it's up to the minister.

Q. Yes, but in terms of the lower bound, there's still steps that need to be complied with, so it can't be done in two weeks?
A. I mean, fundamentally that's up to the minister. But it would be unusual.

Q. Is there anything that would actually prevent it occurring within two weeks if the minister decided? Are there steps, for example, that need to be conducted that it just couldn't be done in that sort of a timeframe?
A. Well, the minister would need to assess the amendment and determine, I guess, one, whether she wants to be the planning authority, and then assess the amendment documentation and make a decision. So it's - I guess it's up to the minister in terms of how long that takes.

Q. What's the quickest you've ever seen a decision from the minister electing to be the planning authority?
A. In terms of our planning scheme amendments, I'd be guessing, I'd say probably six months plus.

Q. Thank you. Now, I've diverted you towards the end rather than starting at the beginning. So let's go down the two pathways. The first is the shire's the planning authority. Could you just explain to the chair what the steps are in the scheme to achieve an interim EMO if you're the planning authority?

A. So you need to prepare the documentation and then submit a request to the Minister for Planning for authorisation to prepare the amendment. The minister then assesses all of that documentation and makes a decision whether or not to authorise. Assuming council is authorised to prepare the amendment, then we take public exhibition for a minimum of four weeks. Then we review all of the submissions. Assuming there are submissions that can't be resolved, then we go to a planning panel. The planning panel then reviews all of the submissions and makes recommendations to council. Council then considers those recommendations and determines what to do with them and whether to make changes as recommended - the recommendations or not, and whether or not to adopt the amendment. Assuming council then adopts the amendment, then that goes to the Minister for Planning for approval. One she approves it, then it gets gazetted and becomes part of the planning scheme.

Q. Has the shire ever imposed an interim EMO?
A. Not that I'm aware of.

Q. Okay. And you said before I think that an interim EMO could at least theoretically be imposed based on the 2012 Cardno mapping?
A. Yes.

Q. Why is it that new mapping wouldn't be necessary?
A. Ideally new mapping is required because that is 2012 data that needs to be verified. But for an interim overlay which is effectively put in place to - as a stop gap measure between the time for the mapping - updated mapping to occur, that data is sufficient.

Q. I see. And, before we come to the second path, on the question of the effect of an interim EMO as opposed to a final EMO does an interim EMO have some sort of more limited lifespan?
A. They usually have an expiry date.

Q. That's a date imposed by the minister?
A. Yes.

Q. I see. And, other than that expiry date, is there any difference between an interim EMO and a final EMO?
A. No.

Q. I see. To return then to the mapping, the 2012 Cardno mapping could be used for the purpose of imposing an interim EMO here and at least theoretically the interim EMO could remain in place until such time as the updated mapping's done and the final process is complete?
A. That's correct.

Q. Although the updated mapping and the full process would be a matter of years?
A. Correct.

Q. But an interim EMO could remain in place for a matter of years?
A. Correct.

Q. I see. Thank you. Can we talk then of the - well, no, before we go to the second pathway, on the assumption that the existing Cardno mapping was being used, what's the longest part of the process if the council's the planning authority? What is it that takes the - what step takes the longest?
A. It really depends. Authorisation can take an amount of time. That's, I guess, up to the Minister for Planning, how long that takes.

Q. Authorisation in this context means authorisation from the minister --
A. Yes, to prepare the amendment. Yes. So that can be short or that can be a long amount of time. The other lengthy part is the consultation and then consideration of submissions, and then the planning panel obviously as part of that.

Q. This council has been through the EMO process a number of times?
A. Yes.

Q. Have you been employed at the council when EMO processes have been undertaken?
A. I have not been.

Q. I see. Have you been employed at other councils when EMO processes have been undertaken?
A. I have not been.

Q. Do you have any understanding from others within the council with regard to prior EMO processes whether they

tend to generate a large amount of community response and submission?
A. I don't from other people. I am assuming that they would.

Q. I see. There was an EMO - I think it's EMO6 - imposed relatively recently at the - by the shire.
A. Correct.

Q. You weren't there at that time?
A. No, sorry, I was there for that one. No, you're right. Yes.

Q. But you weren't involved in it; is that right?
A. I was involved on the periphery.

Q. I see.
A. Yes, I was.

Q. Do you know if there were many public submissions in respect of that particular EMO?
A. It was bundled up with other controls that included flooding overlays and also kind of character overlays. There were a number of submissions. I don't know what they were off the top of my head in terms of numbers.

Q. I see. Just to understand before we get to the second pathway how EMOs sit practically within the planning system, for you as somebody who works within the planning department at the council do you consider it a large step to impose an overlay on land?
A. Not a large step, but it's certainly a step that needs to have strategic justification.

Q. I see. Particularly for something like an EMO, it is a step that necessarily is restrictive of the rights of the property owner, isn't it? The fact that the EMO sits over the land restricts their use of the land in some respects?
A. It requires additional, I guess, consideration before development's approved.

Q. I see. That's one of the reasons why the public consultation process is seen to be important?
A. One of the reasons, yes.

Q. Let's talk about the second path way now. Now, this is if the minister is the authority. That starts, does it,

with a request by the council to the minister to agree to be the authority?
A. Yes.

Q. And is that a step that's taken concurrently with submitting all of the other paperwork for the EMO or is it just an initial step of requesting that the minister be prepared to become the planning authority?
A. No, it goes along with all of the paperwork for the amendment.

Q. So you do all of the work but you might get a negative response from the minister, in which case you become the authority?
A. True.

Q. And if that happens you're then, what, in a public consultation process?
A. Yes, unless the minister exempts council from that.

Q. I see. Did you say earlier that the principal differentiation in terms of time between the process if the minister's the authority verse the process if the council's the authority is the ability of the minister to exempt herself from the public consultation requirement?
A. It is, as well as the minister, I guess, going through all of the steps council has to do not concurrently but more quickly.

Q. Right.
A. So, for example, for a council amendment where we go through the full process there are a number of, I guess, check-in points with the council itself to make decisions.

Q. Yes.
A. So --

Q. That is the elected representatives?
A. Yes, exactly, elected representatives. Whereas if the minister does it then she obviously doesn't need to go through those stages. She just, I guess, gets the request and makes the decision about whether she wants to be the authority and then can go to a decision about whether to approve the amendment.

Q. The minister, though, can also exempt council from the public consultation process?

A. Yes.

Q. And that exemption could be granted at the request of council?
A. Yes, I believe so.

Q. Council, for example, could request that the minister become the relevant authority and, in the alternative, if the minister was unwilling to become the relevant authority request that the minister exempt the council from the public consultation process?
A. Yes, I believe so.

Q. And that outcome would ensure that there's at least some abbreviation of the council's own process?
A. Yes.

Q. But it would still almost inevitably be a longer process than if the minister stepped in as the authority?
A. Yes.

Q. Thank you. Has the council - well, no, before I come to that let me ask a more general question. How, as a matter of practicality within the planning department of the council, does the question of whether or not an overlay of any kind ought be imposed come to be considered?
A. It's usually through - planning scheme review is one mechanism where we have to review the planning scheme every four years, and as part of that we look at how the planning scheme is operating and whether there's any gaps. Another mechanism could be if there's VCAT decisions, for example, that planners become aware of and that are then shared with us outside of that formal process.

Q. Now, accepting that you weren't at the council at the time, for the purpose of preparing to give evidence today have you become generally aware of the circumstances in McCrae; that is, the two landslides that occurred in 2022 and 2025?
A. I have, yes.

Q. And you're also aware of the fact that there's not an extant EMO for the area where the landslides occurred?
A. Correct.

Q. Is it a surprise to you that there wasn't a step taken to impose an interim EMO after the 2022 landslide?

A. No, because I guess for a couple of reasons. While there's not an erosion management overlay over the site, there are a number of other overlays which allow consideration of erosion. So the ESO and the DDO. So that combined with council's internal process of utilising the 2012 Cardno data is effectively managing development in that area in a similar manner to an erosion management overlay. And I guess the other reason is because, whilst the cause of the landslip is obviously being investigated, it didn't appear to be as a result of buildings and works; it appeared to be as a result of water, which overlays don't control.

Q. That is true, that overlays don't control water. But as a matter of ordinary application EMOs are applied in areas that are susceptible to landslide, aren't they?
A. Yes.

Q. So the fact that there had been a landslide of some magnitude is perhaps indicative alone, irrespective of cause, of the fact that the area might be one that's properly subject to an EMO; would you accept that?
A. Yes.

Q. And are you aware of whether or not consideration was given to an interim EMO being applied in the McCrae area after the November 2022 landslide?
A. No, I don't - I don't think one was considered.

Q. You mentioned before ESOs and DDOs, and I'm going to get confused very quickly with the initialisations. What's an ESO?
A. Environmental significance overlay.

Q. What's a DDO?
A. Design and development overlay.

Q. And your evidence was to the effect that the ESO and DDO that apply in respect of the McCrae area have an operation that is not unlike the operation of an EMO; is that a fair statement of what you said?
A. Yes, they allow for consideration. So I guess, to clarify, the erosion management overlay would be the most appropriate tool. That's the planning tool that's in place for erosion. And there has been recommendations in the planning scheme review that there is a need to update the mapping and apply a permanent EMO across the shire. So

that is certainly on the radar to do. But in terms of whether or not there was, I guess, a more urgent need after those landslips, those overlays do allow consideration of buildings and the risk of erosion.

Q. I see. And so is it your evidence then that as a matter of practicality if there was building work proposed in the McCrae area that would be assessed in a particular way if an EMO is in place, although there is no EMO in place it would still be assessed in relevantly the same way by reason of the combination of the ESO and DDO?
A. And the combination of the internal process that council uses, which is to use the 2012 Cardno mapping in areas that are in red to look at whether a geotech assessment is required.

Q. And is this an area in red?
A. Yes.

Q. And so, that being so, do you understand why there was never an erosion management overlay applied to this particular area?
A. There was the intent to do that with the updated mapping. So I guess when looking at overlays we use the best available mapping.

Q. Yes.
A. 2012, if we're looking at applying a permanent overlay, you'd be looking to update that mapping. And so I guess the process for those permanent overlays was to occur. And a consideration of an interim, yes, we hadn't considered that.

Q. You've looked at the 2012 mapping?
A. At a high level.

Q. I see. Is there anything in the 2012 mapping that indicates that the McCrae area ought not have had an EMO applied?
A. No.

Q. Again, accepting the fact that you weren't there at the relevant time, is there any information that you're aware of that would indicate why an EMO wasn't applied originally?
A. No.

Q. I see. Thank you. I asked you before if there was to your knowledge any consideration of an EMO - an interim EMO, rather, being applied after the November 2022 landslide. I want to move now to the January 2025 landslide. Has there to your knowledge been consideration given by the council seeking to impose an interim EMO over the McCrae area?
A. Yes.

Q. All right. Now, are you involved in those considerations?
A. Yes.

Q. I see. And who is it that is considering it or is it a group or a person?
A. No, it's a group at council.

Q. Is it a committee?
A. It's not an official committee, but it's got the relevant people across council.

Q. Not just within the planning department?
A. Not just within planning.

Q. Okay. And are you part of that relevant group?
A. Yes.

Q. I see. And when was that relevant group formed?
A. We started considering it in January, and then we've met a number of times since then.

Q. And the consideration is whether to seek to impose an interim EMO?
A. There's two. So it's around the interim EMO and then also to progress the updating of the 2012 mapping so we can proceed with a permanent overlay.

Q. I see. Okay. Well, let's just stick with the interim for present purposes. Consideration commenced on the question of an interim EMO in January, did you say?
A. Yes.

Q. And what's the current state of the council's consideration on that question?
A. So we are - we need some geotechnical advice in terms of whether to look at the red and the yellow or just the red, and also around the mapping because there are

non-contiguous areas, so kind of I guess blobs of the red and yellow areas, which we need to determine whether or not, and they may only apply over certain properties. So a decision needs to be made whether or not the overlay applies to that whole property or not.

Q. Just explain to me for a moment the relevance of the red or yellow in these considerations. Start from the basis that you know that on this particular hill in McCrae there's been two landslides since 2022. That's a known fact.
A. Yes.

Q. You accept that. You've also got mapping, and the mapping's got some colour codes. And are you saying that the colour coding of the area where the particular landslides have occurred is unclear or is it areas around that that's unclear?
A. No, sorry, we're looking at shire wide, not just for the McCrae area.

Q. I see. I see. Well, that's important to understand. So when you've been giving evidence about the possibility of an interim EMO being applied you're not speaking about an interim EMO to be applied in respect of the McCrae area alone?
A. No, we're looking at shire wide.

Q. Has consideration been given to whether or not there should be an interim EMO process in respect of the McCrae area or a part of the McCrae area alone?
A. Yes, that has been considered. I guess the issue with that is there are other areas in the shire that are also red. So, whilst that would address McCrae, it may not address the other areas in the shire.

Q. And then there's the concern about the orange and whether you need to go - or did you say yellow or orange; I can't remember?
A. Yes, orange, yellow; yes.

Q. But is there any reason why council couldn't have formed the view very quickly after January 2025, if not before, that at least in respect of those areas that are red on the 2012 Cardno mapping that an EMO should be applied immediately?
A. In relation to McCrae or more generally?

Q. Well, start with McCrae. In relation to McCrae itself is there any particular reason why that decision couldn't have been taken quickly?
A. No, apart from just ensuring that the evidence base was okay.

Q. The evidence base is unlikely to be contested in circumstances where there have been two landslides, isn't it?
A. True.

Q. So was the real concern that there might be a risk in applying an interim EMO in respect of McCrae only when there are other areas within the council that are relevantly similar to McCrae also red on the Cardno mapping but no EMO applied? Was that the actuating concern that meant that you didn't seek to apply an interim EMO in respect of McCrae only?
A. We were considering, if we were going to go through a planning scheme amendment process via the minister or council, it would make sense and be the most efficient process to do it for all of the red areas because it's the same effective process and time limit, I guess.

Q. I see. So then let's expand one of my earlier questions out. Is there any reason why the council couldn't have come to a decision relatively quickly to seek to apply an interim EMO in respect of any red areas on the 2012 Cardno mapping that are not currently subject to an EMO?
A. There are no subject to, I guess, the relevant documentation and ordinances, so the schedules to the EMO being drafted. But --

Q. Yes, there is the practical matter that the schedules need to be drafted. But they would be drafted once a decision had been taken to seek to impose the EMO, wouldn't they?
A. True.

Q. And was consideration given so far as you can recall to applying an interim EMO to all red areas on the Cardno mapping?
A. Say that again?

Q. Was consideration in fact given to applying an interim

EMO to all red areas on the Cardno mapping that were not currently subject to an EMO?
A. Yes, this year.

Q. That was considered?
A. That's something that we have considered, yes.

Q. It's still under consideration?
A. It is, yes.

Q. So no decision's yet been taken?
A. No.

Q. And you're also considering, I think you said, the position of some of the yellow or orange areas on the Cardno mapping?
A. Yes.

Q. Is that right?
A. Yes.

Q. And is the consideration there whether some or all of those areas ought also be subject to an interim EMO?
A. Yes.

Q. So the current state of the matter is since January the council's been giving consideration to this question. It's not a formal committee but there's a group. If you're on it, you know who you are. No decision yet taken in respect of the red areas. No decision yet taken in respect of the orange or yellow areas. Is there a timeframe by which these decisions are agreed to be taken or is it less formal than that?
A. Yes, so we would be looking to go to council for a decision in late July, early August.

Q. Somebody is going to put a paper together to council, and the council will consider it in session?
A. Yes.

Q. Is that how it happens?
A. Yes.

Q. When did you say? Late July, early August?
A. Yes.

Q. How often does council meet?

A. It's just changed. I think it's now every three weeks.

Q. Every three weeks. And how long in advance do you need to submit a paper in order for the council to consider it at a meeting? Is there a process?
A. There is. From memory, I think it's about three weeks.

Q. These considerations commenced in January. Does this group meet? Do you actually sit down together or is it less structured than that?
A. No, we meet.

Q. All right. And do you meet regularly?
A. Usually about monthly.

Q. Particular members of the group or the staff for whom they're responsible do work following these meetings, do they?
A. Yes.

Q. To feed into the deliberations?
A. Yes.

Q. So just explain to me why it's taken so long? It's been five months.
A. M'hmm.

Q. What is it that has caused this to still be at the state where no decision's been reached?
A. We were waiting for - when the board of inquiry was going to be finishing earlier, we were waiting until that had finished so that we could take in any other relevant considerations of the report. But, now that the inquiry has been extended, we're moving with a decision of council.

Q. Was that the sole reason?
A. That was the reason it hadn't gone to council for a decision. And then in terms of the, I guess, overlay itself we've been needing to get advice from the geotech or I guess - yes, advice from geotech in terms of the red and the yellow areas, and whether or not it's appropriate to include the yellow or just the red areas.

Q. And who's giving that advice?
A. We're getting external consultant's advice on that.

Q. Geotechnical?
A. Yes.

Q. Do you know who?
A. I don't, off the top of my head.

Q. Has that advice now been received?
A. No, it hasn't.

Q. And do you know when that advice will be received?
A. I think in four to five weeks.

Q. So that advice will be received in four to five weeks, which will put you at the end of July?
A. Yes.

Q. So this isn't going to council in late July, is it?
A. So what's planned to go to council is seeking their approval to proceed with an interim overlay, and to make the data publicly available, and to I guess seek their approval to go through a 20 part 4 or seek the minister to go through a 20 part 4 amendment process, and then we would go back in October with the actual amendment documentation.

Q. Go back to council in October?
A. M'hmm.

Q. And this is with the view to asking the minister then to become the responsible authority?
A. Yes.

Q. And so if the council makes a decision in October to proceed with that process what's the next step?
A. A request to the minister.

Q. And then the minister will give consideration to that request when she receives it at some point in time. And then, just remind me, what's the best and most likely fastest time?
A. I'd suggest four to six months.

Q. From then. So if you get your skates on and you get something to council late July, early August and that causes something to go to the minister in October and the minister deals with it promptly, accepting the December/January period might be a period where less

happens than would otherwise, we're first quarter of 2026 at best, possibly second quarter of 2026, is that fair?
A. Yes, probably February/March.

Q. When you're considering erosion management overlays as a concept do you think of it solely as a planning control or do you think of it as a matter that is also relevant to questions of safety?
A. No, as a planning control to manage development.

Q. I see. Do you accept that the fact of an EMO in particular land might be capable of being used as an indicator for other non-planning control purposes?
A. I do.

Q. And are you aware of whether that in fact occurs within council?
A. I'm not.

Q. Can I just ask you as an experienced planning professional do you think that there ought be a more expedited process for the imposition of an interim EMO than currently exists under the state planning regime?
A. I do.

Q. And if there was to be a more expedited process is there any particular way that you think that could be achieved?
A. I think the Minister for Planning should be the planning authority and use the best available data to apply those controls.

Q. And when you give that evidence you're meaning specifically in the context of an interim EMO?
A. No, more broadly in relation to environmental risk.

Q. I see.
A. There is, I guess, a systemic issue with particularly environmental risk overlays where the data comes out and it takes time for it to go into the system.

Q. I see. So the same sorts of delays might apply in respect of bushfire risk?
A. Bushfire risk is different because the minister already essentially has put in the bushfire management overlay, and that's the process we think or I think would be better for environmental risk more generally.

Q. That process that exists in respect of bushfire risk could in effect be picked up and applied to other environmental risks including landslide, in your view?
A. Yes.

Q. And that would create a system where not just interim but final overlays could be applied more quickly?
A. Yes, and in fact that would get rid of the need for interim overlays and you could go straight to a permanent overlay.

MR COSTELLO: Thank you. Madam Chair, I have no further questions.

CHAIRPERSON: (Inaudible). Thank you for coming along.
A. Thank you.

<THE WITNESS WITHDREW

MR COSTELLO: Happily, Madam Chair, that was the last witness for the day.

CHAIRPERSON: Yes, thank you. We'll adjourn until 10 am on Monday.

AT 4.13 PM THE HEARING ADJOURNED UNTIL MONDAY, 23 JUNE 2025

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